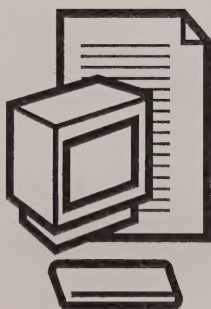


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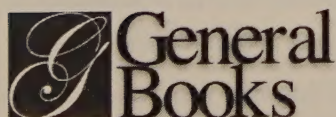


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# THE LAW RELATING TO PARISH COUNCILS, BEING THE LOCAL GOVERNMENT ACT, 1894. TOGETHER WITH AN INTRODUCTION AND STATUTES RELATING TO PARISH AND

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## PREFACE.

The Local Government Act, 1894, effects two main purposes. In the first place it establishes an entirely new system of parish government in rural districts by means of parish councils and parish meetings. Secondly it reforms, without however very extensively affecting their functions, certain existing local authorities.

In preparing notes to the provisions of the Act directed to the former purpose, my object has been to give, within the limits of the work, a fairly complete account of at least such branches of the law concerning parish councils and meetings as members and officers of those bodies will have occasion to render themselves acquainted with, in such a form as to be of utility to persons upon whom the task of carrying into effect the provisions of the Act relating to parish government will fall, as well as to members of the legal profession.

It appeared to me that, if I would attain this object, I must not assume on the part of my reader either technical legal knowledge or extensive practical familiarity with the working of the existing law relating to local government. I have accordingly been studious, so far as seemed possible without sacrifice of accuracy, to avoid the use of technical language. And I have in many instances included in a note such a general outline of the law relating to some matter with which parish councils and meetings



will be concerned, as should enable the lay reader fully to understand the specific functions with which such bodies are invested in regard to the matter in question.

To the portions of the Act which relate to the reform of existing authorities it would have been impracticable to apply similar treatment; and I have accordingly, in annotating such portions of the Act, contented myself with endeavouring to elucidate the changes in the law that they effect.

It seems proper to state that, except in some few instances, no specific mention has been made in the present work of repeals effected by the Statute Law Revision Acts: words in any enactment quoted that have been repealed by these Acts have as a rule simply been omitted.

A. F. JENKIN.

New Court, Temple, April, 1894.

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- Young, Cuthbertson v. 120 Â. Higgon. 239, 241 â v. Leamington (mayor, etc.) 14,

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Youngjohns v. Grant. 308 Ystradgynlais Commutation, Re 183

## INTRODUCTION.

Genekal Scheme of the Act.

Preliminary. â The Local Government Act, 1894, though it incidentally amends the substantive provisions of the law relating to local government in some important particulars, is chiefly concerned with the authorities by whom the law is to be administered.

The main purposes the Act effects in the latter l-espect are:â

The establishment of parish councils and parish meetings for the government of rural parishesâ parishes, that is, whether popularly speaking of a rural character or not, that are comprised in rural sanitary districts:

The substitution of rural district councils for rural sanitary authorities:

The reform of urban sanitary authorities, other than councils of municipal boroughs, and their transformation into urban district councils: The reform of boards of guardians: The reform of metropolitan vestries and the local board of Woolwich, and, to a very limited extent, of metropolitan district boards of works:

The abolition, sooner or later, of the independent highway authorities, which exist in rural districts, and the transfer of their functions to the rural district councils:

The abolition in rural parishes, in most cases of separate authorities under the " adoptive Acts "â i. e., of burial boards; boards of commissioners under the Baths and Washhouses Acts, the Public Libraries Act, and the Public Improvement Act; and lighting and watching inspectorsâ and the transfer of their functions to the parish councils:

The adjustment of areas of local government in such a way as to diminish the inconveniences arising from intersecting boundaries. The most important provisions of the Act of a sub- stantive character are probably those relating to allotments and to parochial charities.



Elections. â The authorities to be elected under the Act â parish councils, district councils other than borough councils, boards of guardians, metropolitan vestries and the local board of Woolwichâ will all be elected on the same franchise; and in each case the election will, in case of a contest, be conducted by ballot on the lines of an election of borough councillors. 1

Parochial electors. â At all elections under the Act the voters are to be the persons registered as " parochial electors," in respect of qualifications within the area l'or which the election is held. 2

The register of parochial electors for a parish will consist of such portions of the parliamentary register of electors and of the local government register of electors as contain the names of persons registered in respect of qualifications within the parish, taken together. The Act amends the law relating to the registration of electors so far as is necessary to give effect to this provision in the case of persons possessing qualifications in more parishes than one, and in the case of persons registered as ownership voters for a county in respect of a qualification within a parliamentary borough. 3 And it is provided that, for the purposes of the Act, marriage shall not disqualify a woman for being registered as a local government elector, or for being an elector of any local authority. Husband and wife, however, are not both to be qualified in respect of the same property. 4

The practical result of these arrangements is, putting it broadly, that (with the exception of the few persons registered as parliamentary electors in respect of " reserved rights," and not possessing any other qualification) every person who has a vote at elections of members of Parliament, or of borough or county councillors, will be a parochial elector, and have a vote accordingly at elections under the Local Government Act, 1894; and further, that a married woman possessing a qualification apart from her husband which, if she were single, would entitle her to vote at an election of members of a borough or county council, will be entitled to be put on the register and to vote as a parochial elector.

First elections. â The first elections under the Act are (1) Sects. 2 (2, 5), 3 (5, 6), 20 (3, (3), 24 (4), 31 (1), 75 (2), 4, 5), 23 (3, 4, 5), 24 (4), 30, 31 (1), (3) Sect. 44, 48 (4) Sect. 43.

(2) Sects. 2 (1), 3 (5), 20 (3), 23 to take place on the 8th November, 1894, or on such later date or dates in the year 1894 as the Local Government Board may fix, and the persons then elected will come into office shortly after their election. 1

Anointed day. â Many of the provisions of the Act are to operate as from the " appointed day." The expression " appointed day " is somewhat elaborately defined; but in general it means either the day on which the first elections under the Act will be held or the day upon which the persons then elected will come into office. 2

New and Keformed Authorities.

Parish meetings and parish councils.â The Act establishes a " parish meeting " for every rural parish; that is, as has been stated, for every parish in a rural sanitary district. 3

A parish meeting will be in effect a reformed vestry, at which every man or woman registered as a parochial elector for the parish will be entitled to attend and vote. 4

Inasmuch as some misapprehension is believed to exist on the point, it may be well to insist at once on the fact that the expression " parish " is used in the Act as meaning a parish for poor law purposes, or, in other words, practically a place, whether it is called a parish, or a township, or by any other name, which has independent overseers.

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Where a parish was, at the passing of the Act, situate partly within and partly without a rural sanitary district, it will, subject to any arrangements made by the county council in the meantime, be subdivided when the time comes for holding the first parish meeting, and the part in the rural sanitary district will become an independent parish for poor law purposes, and have its parish meeting accordingly. 6

The first parish meeting for a parish will be convened by the overseers, and will be held on the 8th November, 1894, or on such later date in 1894 as the Local Government Board may fix. 7

The provisions of the Act with regard to the establishment of parish councils are of a somewhat more complicated nature.

In the first instance, a parish council will be elected, (1) Sect. 84. (5) See further, p. 177.

(2) Sect. 84 (4). (6) Sect. 1 (3).

(3) Sect. 1. (7) Sects. 78 (1), 84.

(4) Sects. 2, 44 (1).

on the 8th November, 1894, or such later date in 1894 as the Local Government Board may fix, for every rural parish with a population, according to the census of 1891, of 300 or upwards. 1 And in the first instance there will be no parish council for any parish with less population. 2

The initial simplicity of this arrangement may, however, after the parish meetings come into being, be modified in two ways:â

In the first place a separate parish council may, upon the application of the parish meeting, be established, by order of the county council, for a parish with a population of less than 300. If the parish has a population, according to the census of 1891, of 100 or upwards, the parish meeting will be entitled to demand the establishment of a parish council. But if the parish has a population below 100, it will be in the discretion of the county council to accede to the application or not. 3

Secondly, the Act provides that two or more rural parishes, irrespectively altogether of their population, may be formed into a " group " of parishes under a single parish council. Parishes are, however, not to be grouped without the consent of the parish meeting of each parish, and, notwithstanding that parishes are grouped, there will be a parish meeting for each parish in the group. 4

It will be seen, therefore, that the Act provides three distinct systems for the government of a rural parish: 1st. The parish may have a separate parish council. 2nd. The parish may not be under a parish council at all. 3rd. The parish may be grouped with some other parish or parishes under a common parish council. â Where parishes are grouped, the respective functions of the parish council of the group, and of the parish meetings of the several parishes in the group, in any particular instance, will depend so largely on the provisions of the grouping order that any attempt to discuss the case in a systematic way would be useless. The ensuing account of the constitution

and functions of parish meetings and parish councils is therefore confined (1) Sect. 1; and see, as to the parish council for the parish, but conclusiveness of the census of the district council will act as the 1891 as to population, sect. 75 (2). parish council for the parish: see

There is one exception to the sect. 36 (4). general proposition in the text:â (2) See p. 146.

If the parish is co-extensive-with a (3) Sect. 1, and see sect. 38.

rural district, there will, in the first (4) lb.

instance, unless the county council (5) See p. 146.

otherwise direct, be no separate to cases where a parish either has a separate parish council or is not under a parish council at all.

In no case will there be a parish council for a parish in an urban sanitary district, or in London. But the Act empowers the Local Government Board to confer any powers, duties and liabilities of a parish council on the council of an urban district, or on some other representative body within such a district; and makes similar provisions as regards county boroughs and sanitary districts in London. 1

Constitution and powers of a parish meeting. â As has already been stated, a parish meeting will be in the nature of an open vestry at which every parochial elector will be entitled to attend and vote. 2

In a parish with a separate parish council the chairman of that council, if present at a parish meeting, is, unless he is a candidate for election at the meeting, to be the chairman of the meeting. 3 In a parish not under a parish council the parish meeting are to elect a chairman annually. 4 If the regular chairman of a parish meeting is absent or unable or unwilling to act, the parish meeting are empowered to elect a temporary chairman. 5

The parish meeting for a parish not under a parish council will have power to appoint a committee of their own number for any purposes which they consider would be better regulated and managed by means of such a committee; but all the acts of the committee are to be submitted to the parish meeting for their approval. 6

Any question arising at a parish meeting is in the first instance to be decided by a majority of those present and voting on the question; and the chairman is to have a second or casting vote. Provisions are, however, made under which a poll may be demanded. On practically all the more important questions likely to come before a parish meeting a single parochial elector (1) Sect. 33. responds to such an expression as (2) The name "parish meeting" "local board" in the other to is singularly ill-chosen and leads "meeting of a local board." Some-to much confusion of language. times, it may be mentioned, this At one moment the expression is difficulty of language is met in the used to mean the parish meeting Act by the use of the expression regarded in an abstract way as a "assembly of the parish meeting" continuously existing authority; instead of the expression "parish and at another time the express meeting" in the latter sense.

sion means the actual meeting of (3) Sect. 45 (2).

the parochial electors who are (4) Sect. 19 '1).

members of that authority. In (5) Schedule 1., Part I. (10).



the one sense the expression corre (0) Sect. 19 (3), will have the right to demand a poll; but on other questions a poll is not to be taken unless the chairman assents, or the poll is demanded by a number of parochial electors not less than five, or one third of those present, whichever number is least. 1 On all questions arising at a parish meeting, whether a poll is taken or not, all the parochial electors will have equal voting power. 2

Rules regulating the conduct of a poll consequent on a parish meeting are to be framed by the Local Government Board; 3 but the Act provides that the poll shall be taken by ballot, 4 and that the Ballot Act, subject to modifications made by the rules, shall apply. 5

A parish meeting of any parish, whether there is a parish council or not, will have among others the following functions:â

They will have the power of adopting any of the " adoptive Acts "â i. e., the Lighting and Watching Act, the Baths and Washhouses Acts, the Burial Acts, the Public Libraries Act and the Public Improvement Actâ and will have certain functions in relation to the execution of such of these Acts as may have been adopted in the parish. 6

They will have certain of the powers at present vested in the owners and ratepayers of the parish as to dealings with parish property, the spending of money or the raising of a rate. 7

They will have the power at present vested in certain electors in the parish of applying to the Education Department for the formation or dissolution of a school board. 8 The parish meeting of a parish with a separate parish council will in addition have, among others, the following functions:â

They will exercise control over the parish council as regards dealings with parish property, 9 the expenditure of money, the raising of loans, 10 and the supporting or opposing of a scheme relating to a parochial charity. 11

They will have power to negative any resolution of the parish council consenting to the stopping or diversion of a public right of way or to a declaration (1) Schedule I., Part I. (5, 6, (6) Sect. 7.

7, 8). (7) Sect. 52 (1).

(2) Sect. 2 (2). (8) Sect. 52 (2).

(3) Sect. 48 (8). (9) Sect. 8 (2).

(4) Sect. 2 (5). (10) Sect. 11.

(5) Sect. 48 (3, 8). (11) Sect. 14 (5).

Introduction. xxxi that a highway is unnecessary and not repairable at public expense. 1 In a parish not under the jurisdiction of a parish councilâ and it will be remembered that every rural parish with a population under three hundred, according to the census of 1891, will in the first instance be in this positionâ the parish meeting, besides the functions attaching to every parish meeting, will have, among others, the following functions 2:â

They will appoint the overseers, and have the power of appointing and revoking the appointment of assistant overseers. 3



They will discharge all the functions at present attaching to the vestry, except so far as they relate to the affairs of the church or to ecclesiastical charities, and except, in some cases, the functions of the vestry relating to highways. 4

They will have certain powers in relation to the management of parish property. 5

They will have certain functions, in addition to those vested in every parish meeting, in relation to the adoptive Acts. 6

Their consent will be necessary to the stopping or diversion of a public right of way or to a declaration that a highway is unnecessary and not repairable at public expense. 7

They will have power to make complaints to the county council where a district council make default in the discharge of their duties in relation to the parish. 8

They will have certain functions in relation to parochial charities. 9 Such a parish meeting may also have conferred on them by the county council any of the powers conferred on a parish council by the Act. 10

A parish meeting will not be a corporate body and will therefore not be able to hold land. To meet the difficulty thus arising, the Act provides that in every rural parish not under a parish council, the chairman of (1) Sect. 13. to sect. 13, pp. 115-117.

(2) The additional functions (5) Sect. 19 (6, 7).

attaching to the parish meeting of (6) See the note to sect. 7, and a parish not under a parish council sect. 53.

may be regarded as merely certain (7) Sect. 19 (8).

of the functions which, where there (8) lb.

is a parish council, attach to that (9) Sects. 14 (3), 19 (5); and see council. post, p. liii.

(3) Sect. 19 (5). (10) Sect. 19 (10).

(4) Sect. 19 (4), and see the note xxxii Introduction.

the parish meeting and the overseers shall be a corporation with power to hold land for the purposes of the parish, and shall in all respects act in manner directed by the parish meeting; and that the legal interest in all property, which under the Act would, if there were a parish council, be vested in that council on the appointed dayâ i. e., on the coming into office of the parish council l â shall vest in the chairman and overseers. 2

Constitution, foivers, c, of 'parish council. â A parish council will be a corporate body consisting of a chairman and councillors. The number of the parish councillors for a parish is to be determined by the county council, but is not to be less than five, nor more than fifteen. The parish councillors are to be elected, as has been stated, by the parochial electors of the parish. The chairman is to be elected by the councillors either from among their own number or from outside. 3

An election of parish councillors is to be at a parish meeting or at a poll consequent thereon. Rules regulating the conduct of the election are to be framed by the Local Government Board. The Act, however, expressly provides that, where a poll is taken, the election shall be by ballot; and that the Ballot Act, and certain other enactments relating to municipal elections shall, subject to any modifications made by the rules, apply in like manner as in the case of a municipal election. 5

In general, parish councillors will be elected at one election for the whole parish, but a parish may be divided by the county council into parish wards; and in that case, the parish councillors will be elected one or more for each ward. 6

The first parish councillors will hold office till the 15th April, 1896; but after that date, the term of office of a parish councillor will be one year. 7

To be qualified for election to the office of parish councillor, or of chairman of a parish council, a person must either be a parochial elector of the parish, or must have resided in the parish, or within three miles thereof, during the whole of the twelve months preceding the election. 8 There are certain disqualifications for membership of a parish council, 9 but neither sex nor marriage (1) See sect. S4 (4). (8) Sect. 3 (1). It seems proper (2) Sect. 19 (tj, 7). to point out that residence in this (3) Sect. 3. section means only residence in the (4) Sect. 48 (1). eye of the law, and does not mean (5) Sects. 2 (2, 5), 3 (G), 48. unbroken physical residence: see (6) Sect. 18. further, pp. 8-12.

(7) Sects. 3 (4), 7S (3). (0) Sec' 8.

Introduction. xxxiii will disqualify a woman for membership of a parish council.

1

A parish council will have power to appoint committees and to join with other authorities in the appointment of joint committees. 2 They are either to appoint one of their number to act as clerk without remuneration, or to have a paid clerk. 3 And they may appoint a treasurer, but without remuneration. 4

The following will be the more important powers and duties of a parish council elected for a single rural parish:â

They will appoint the overseers, and have the power of appointing and revoking the appointment of assistant overseers. 5

They will discharge all the functions at present attaching to the vestry, except so far as they relate to the affairs of the church or to ecclesiastical charities; and except also such functions of the vestry as will attach to the parish meeting, and, in some cases, those relating to highways. 6

They will discharge all the functions of the churchwardens of the parish, except so far as they relate to the affairs of the church, or to charities, or are functions of overseers. 7

They will have certain of the powers and duties of overseers. 8

They will have powers to hold and deal with parish property. 9

They will in most cases act in the execution of any of the adoptive Acts that may be in force in their parish. 10

Their consent will be necessary to the stopping or diversion of a public right of way, or to a declaration that a highway is unnecessary and not repairable at public expense. 11

They may have powers of the district council delegated to them; and it is provided that, if a rural district council delegate powers to a parochial committee, consisting partly of their own members and partly of other persons, such other persons shall be chosen from among the parish councillors. 1 ' 2 (1) Sect. 3 (2). (7) Sect. 6 (1, b).

(2) Sects. 56, 57. (8) Sect. 6 (1, c).

(3) Sects. 17, 81 (2). (9) Sects. 5 (2), 6 (1, c, d), 8, 2).

(4) Sect. 17. (10) Sects. 7, 53.

(5) Sect. 5 (1). (11) Sect. 13. (0) Sect. 6 (I, a); and see the (12) Sect. 15.  
note to sect. 13, pp. 115-117.

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They will have power to make complaints to the county council where a district council make default in the discharge of their duties in relation to the parish. 1

They will also have functions as to allotments, 2 public buildings for parochial purposes, 3 recreation grounds, village greens, public walks and open spaces, 4 water supply, 5 nuisances, 6 the acquisition of rights of way, 7 public footpaths, 8 commons, 9 and charities. 10

Expenses of parish meeting. â In a parish with a separate parish council the expenses of the parish meeting are to be defrayed by the parish council. 11

In a parish not under a parish council the expenses of a parish meeting are to be defrayed out of the poor rate, and for the purpose of obtaining the necessary funds the chairman will have power to issue precepts to the overseers. A rate levied for defraying the expenses of such a parish meeting, when added to expenses under any of the adoptive Acts, is not to exceed 6d. in the pound for the year. 12 The accounts of such a parish meeting are to be made up yearly in such form as the Local Government Board prescribe, and are to be subject to audit by the district auditors. 13

Expenses of parish councils. â The expenses of a parish council, with some exceptions, are to be defrayed out of the poor rate, and the council will obtain the funds they require by the issue of precepts to the overseers. 14

The council are not, without the consent of the parish meeting, to incur any expense or liability which will involve a rate for the year exceeding 3d. in the pound; or, without the consent of the parish meeting and the approval of the county council, any expense which will involve a loan. And the sum raised by a parish council for the year to meet their expenses (other than expenses under the adoptive Acts), is not to exceed a sum equal to a rate of 6d. in the pound on the rateable value of the parish at the commencement of the year. 15

The expenses of the parish council in carrying out any (1) Sects. 9 (17), 16, 20. (9) Sect. 8 (1, 4).

(2) Sects. 6 (1 c, 3, 4), 9, 10. (10) Sect. 14, and see post, pp. See further, p. lii. lii-liv.

(3) Sect. 8 (1). (11) Sect. 11.

(4) Sects. G (1, c), 8 (1). (12) Sects. 11, 19.

(5) Sect. 8 (1). (13) Sect. 58.

(6) lb. (14) Sect. 11.

(7) lb. (15) lb.

(8) Sect. 13 (2).

Introduction. xxxv of the adoptive Acts are to be defrayed in accordance with the provisions of the Act or Acts in question. 1

The parish council will have power to borrow on the credit of the rates with the consent of the county council and of the Local Government Board, and the county council are to have power to lend them money. 2



The accounts of a parish council are to be made up yearly in such form as the Local Government Board prescribe, and are to be subject to audit by the district auditors. 3

District councils. â District councils will, as has been indicated, be of two kindsâ "urban district councils" and "rural district councils." The areas under the jurisdiction of district councils are termed in the Act "urban districts" and "rural districts" respectively; and the expression "county district" is used as a generic term for the area under the jurisdiction of any district council.

Subject to any alterations of area that may be made, the county districts will, in general, be merely existing sanitary districts under a new name; every urban sanitary district, other than a county borough, will become an urban district; and every rural sanitary district, unless it extends into more counties than one, when the special provisions applicable to the case will have effect, will become a rural district. 4

An urban district council will practically be the urban sanitary authority, differently elected, except in the case of a borough, and under a new name. A rural district council, on the other hand, will be a newly-created body replacing the rural sanitary authority. 5

A rural district will be properly styled "the district," and its district council, "the district council." 6 And an urban district and its district council will apparently, except in the case of a borough, be styled "the urban district" and "the urban district council." It is, however, provided that the Act shall not alter the style or title of the corporation or council of a borough. It seems, therefore, that the full and correct designation of a municipal corporation, other than the corporation of a county borough, acting in what has hitherto been called their sanitary capacity, will be "the mayor, aldermen, and burgesses of the borough of, acting by the council a) Sect. 7 (6). (4) Sect. 21, and see sect. 24 (5).

(2) Sect. 12. (5) Sect. 21.

(3) Sect. 58. (6) Sect. 24 (7).

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as the district council for the urban district of the said borough."

Constitution and powers of rural district council. â A rural district council will consist of district councillors, elected by the parochial electors of the district, the parishes in the district being practically wards of the district for election purposes, and a chairman elected by the councillors either from among their own number or from outside. 2

The chairman of a district council, unless a woman or personally disqualified, is to be ex officio a justice of the peace for the county in which the district is situate. 3

To render the provisions of the Act with regard to the election and constitution of rural district councils intelligible, it is necessary at this point to digress for a moment, and explain in outline the provisions of the Act with regard to boards of guardians. The Act abolishes ex officio and nominated guardians, provides that the elected guardians shall be elected by the parochial electors, and enables the board of guardians to add to their number to a limited extent by selection from outside. 4 Guardians, as such, however, are not to be elected in a rural district; but the rural district councillors elected for any parish or other area are to represent the parish or area, not only on the rural district council, but also on the board of guardians of the union comprising that



parish or area. 5 Guardians, as such, therefore, will be elected for parishes and other areas in county boroughs, urban districts, and London only.

It will be remembered that at present the board of guardians are the sanitary authority for the rural part of their union, but that guardians representing the urban parts of the union are not entitled to act in relation to matters coming before the board in their sanitary capacity. Practically, therefore, guardians representing the rural portions of the union act as guardians and as members of the sanitary authority, while guardians representing the urban portions of the union act in the former capacity alone. The Act, it will be seen, ingeniously preserves the main features of the present arrangement; and at the same time establishes the rural district council as a separate entity, and renders the boundaries of a rural district independent of those of a fl) Sect. 21. (4) Sect. 20 (1, 3, 7).

(2) Sect. 24 (1, 4), 59 (1). (5) Sect. 24 (3).

f3) Sect. 22.

Introduction. xxxvii union, so that a union may comprise any number of rural districts, and vice versa.

Provisions are made enabling county and county borough councils to fix and alter the number of guardians or rural district councillors to be elected for any parish, and, for the purposes of such elections, to add parishes to each other, and to divide parishes into wards. Subject to any order made under these provisions, any area at present electing any number of guardians will, save in exceptional cases, elect the same number of guardians, or rural district councillors, as the case may be. 1

An election of rural district councillors or of guardians is to be conducted under rules framed by the Local Government Board. The Ballot Act, and certain other enactments relating to municipal elections are, subject to the modifications made by such rules, to apply in like manner as in the case of a municipal election. 2 And the rules are to provide, among other things, for preventing an elector from voting in more than one parish or other area in the union or district. 3

The term of office of a guardian or of a rural district councillor, except in the case of the first guardians and district councillors elected under the Act, is to be three years, and in general, one third as nearly as may be, of the guardians of a union, and of the district councillors of a rural district, are to retire on the 15th April in each year. It is, however, provided that the council of a county or county borough (or in some cases a joint committee of such councils) may, on the application of a board of guardians, direct that the members of the board shall retire together on the 15th April in every third year. Moreover, where at present the members of a board of guardians retire together triennially, the guardians are to continue so to retire, unless the county or county borough council, on the application of the board of guardians or of any district council of a district wholly or partially within the union, otherwise direct. 4 These provisions are applied to district councillors of a rural district; 5 and the Local Government Board state (1) Sects. 24 (2), GO; and see the county council, to elect one p. 151. The only case where the guardian or rural district councillor, number of representatives of an See sect. 79 (2).

area on the board of guardians is (2) Sects. 20 (5), 4S.

directly affected by the Act is (3) Sect. 48 (2).

where a parish is divided by the (4) Sect. 20 (0).

Act, when each of the new parishes (5) Sect. 24 (4). is, subject to any order made by xxxviii Introduction.

that where a rural district is in more than one union, it will be necessary to secure that the mode of retirement of the guardians of the unions shall be the same, as otherwise there may be serious difficulties in connection with the constitution of the district council. 1

Where the guardians or rural district councillors retire by thirds, all the guardians or district councillors elected for one parish or other area are to retire together, so that there will be an ordinary election of guardians or rural district councillors for one constituency only once in three years. And provisions are made authorising county and county borough councils to determine the year in each triennial period in which the guardians or rural district councillors for any parish or other area shall retire. 2

Where guardians or rural district councillors are to retire by thirds, one third of the guardians or councillors first elected will retire in April, 1896, one third in April, 1897, and one third in April, 1898. Where they all retire together, the first guardians and district councillors will hold office till April, 1898.

To be qualified to be elected, or to be, a rural district councillor, a person must either be a parochial elector of some parish in the district, or have resided within the district during the whole of the twelve months preceding his election, or must be qualified to be a guardian " for the union comprising the district." 3 The last provision in the case of a rural district entirely comprised in one union has the effect of extending the qualification, so as to include parochial electors of any parish in the union, and residents within any part of the union. How it is to apply in the case of a rural district not wholly comprised in one union is not clear.

There are certain disqualifications for membership of a rural district council, 4 but neither sex nor marriage is to disqualify for the office of rural district councillor, 5 or it seems for the office of chairman of such a council. 6

A rural district council is assimilated to a borough council as regards the expenses of elections, acceptance of office, re-eligibility of holders of office, and the filling of casual vacancies. 7

The provisions of the Public Health Act as to meetings and proceedings of a local board are to apply to (1) Circular letter of Local Go (4) Sect. 46. verunent Board to county councils, (5; Sects. 20 (7), 24 (6).

dated 24th March, 1894." (6) Sect. 20 (7), and see sect. 22.

(2) Sects. 60 (2, 3), 79 (4). (7) Sect. 48 (4).

(3) Sects. 20 (2), 24 (4).

Introduction. xxxix rural district councils. 1 And such councils will have powers to appoint committees and join with other authorities in the appointment of joint committees. 2

The rural district council are to have transferred to them the functions of the rural sanitary authority in their district, and are also to have such functions of an urban sanitary authority as the Local Government Board may by general order direct. 3

It is further provided that the functions of highway authorities in a rural district shall be transferred to the district council; but the county council are empowered to

postpone the operation of this provision as regards the whole or any part of their county, for a period not exceeding three years from the appointed day i. e., the day when the first district councillors come into office or such further period as the Local Government Board may allow. 4

There are also to be transferred to the district council, certain administrative functions of the justices out of session and of quarter sessions. 5 They are given certain new powers with regard to commons and the protection of roadside wastes and public rights of way. 6 They will have greater facilities than are possessed by the rural sanitary authorities, whom they will succeed, for obtaining compulsory powers for the acquisition of land for allotments. 7 And the county council will be able to delegate functions to them. 8

The Act contains provisions under which complaint may be made to the county council where a rural district council make default in the discharge of certain of their duties. Upon such a complaint the county council will have powers to transfer the functions of the district council in relation to the subject-matter of the complaint to themselves, similar to those which they possess, under the Allotments Act, 1890, where a complaint is made to them of default by a sanitary authority with regard to the provision of allotments; and, in some cases, the county council will have power, instead of transferring the functions of the district council to themselves, to exercise the powers of the Local Government Board under sects. 299-302 of the Public Health Act, 1875. 9 (1) Sect. 59. (G) Sect. 26.

(2) Sects. 56, 57. (7) Sect. 9.

(3) Sect. 25 (1, 5, 6). (8) Sect. 64.

(4) Sect. 25 (1). (9) Sectb. 16, 26, and see sect.

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The expenses of a rural district council are in general to be defrayed like those of a rural sanitary authority, highway expenses being defrayed as general expenses. The Act, however, enables highway expenses to be charged upon a particular area in the district in certain cases; and also provides that where any highway expenses would, if the Act had not passed, have been in whole or in part defrayed out of any property or funds other than rates, the district council shall make provisions to give that parish or area the benefit of such property or funds. It is further provided that the Local Government Board, where they declare expenses under the Act to be special expenses chargeable on a contributory place, may direct that such expenses shall be raised as general expenses i. e., on all classes of property equally and not as special expenses by means of the differential rate required by the Public Health Act. 1 The accounts of a rural district council are to be made up in such form as the Local Government Board prescribe, and are to be subject to audit like accounts of an urban sanitary authority under the Public Health Act, but half yearly. 2

Constitution and powers of urban district council. The Act does not affect the constitution or method of election of the council of a borough.

Every other urban district council will consist of district councillors elected by the parochial electors and a chairman, who, unless a woman or personally disqualified, will, as has been stated, be ex officio a justice of the peace, 3 elected by the councillors either from among their own number or from outside. 4



The Act does not affect the existing division of any urban sanitary district into wards, the number of elective members of the sanitary authority, or their distribution between the wards if the district is divided into wards. Subject therefore to any alteration that may be made in the meantime, any existing wards of the sanitary district will be wards of the urban district, and the number of district councillors for the district or for a ward will be the same as the present number of elected members of the sanitary authority for the district or ward.

The election is to be conducted under rules framed by the Local Government Board and the Ballot Act, and certain other enactments relating to municipal elections are to apply, subject to such modifications as may be (1) Sect. 27, and see sect. 82 (1). (3) Sect. 22.

(2) Sect. 58. (4) Sect. 23.

Introduction. xli made by the rules, in like manner as in the case of a municipal election. 1

The term of office of an urban district councillor, except in the case of the first councillors elected under the Act, is to be three years, and, in general, one third of the councillors for the district, or of the councillors for each ward, as the case may be, are to retire annually on the 15th April. But the county council may, on request made by a resolution of the district council passed by two thirds of the members voting on the question, direct that the members of the council shall retire together on the 15th April in every third year. 2

Where the district councillors retire by thirds, one third of the first councillors elected for the district, or for any ward, will retire on the 15th April, 1896, one third on the 15th April, 1897, and the remainder on the 15th April, 1898. And the order in which the councillors are to retire will depend on their place on the poll, those who were lowest retiring first. If there was no poll, or if a question arises in consequence of an equality of votes between two or more councillors, the matter is to be determined by ballot conducted under the direction of the council. 3

To be qualified to be elected or to be councillor of an urban district council, a person must either be a parochial elector of some parish within the district or have resided within the district during the whole of the twelve months preceding his election. There are certain disqualifications for the office, 4 but neither her sex nor marriage is to disqualify a woman for the office. 5 No positive qualification is prescribed for the office of chairman of an urban district council; but the provisions already referred to, disqualifying various persons for the office of urban district councillor, extend to the office of chairman. It is not expressly provided that her sex is not to disqualify a woman for the office of chairman of an urban district council, but it seems to be implied G that a woman may hold the office.

An urban district council is assimilated to a borough council as regards the expenses of elections, acceptance of office, resignation, re-eligibility of holders of office and the filling of casual vacancies. 7

The provisions of the Public Health Act, 1875, as to (1) Sects. 23 (5), 48. (5) Sect. 23 (2).

(2) Sect. 23 (6). (6) See sect. 22.

(3) Sect. 79 (6, 7). (7) Sect. 48 (4).



(4) Sect. 46.

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meetings and proceedings of a local board are to apply to urban district councils. But the provisions of that Act as to the appointment of committees and the conduct of their meetings are repealed, except so far as relates to boroughs, and new provisions as to committees of urban district councils other than borough councils are made. 1

County borough councils will not, as has been stated, be district councils within the meaning of the Kci. At the same time certain of the provisions of the Act conferring and imposing powers and duties on urban district councils extend also to county borough councils; and it will be convenient, in mentioning certain of these provisions, to state in each case whether they extend to county borough councils or not.

Certain administrative functions of the justices out of session and of quarter sessions are to be transferred to urban district councils 2 and county borough councils. 3 Such councils will have certain new functions in relation to commons, the protection of roadside wastes and the preservation of public rights of way. 4 And they will have increased facilities for obtaining compulsory powers for the acquisition of land for allotments. 5 Urban district councils will have certain new powers and duties in relation to the adoptive Acts; but the provisions of the Act in this respect do not extend to county boroughs. 6

The Local Government Board moreover are empowered, upon the application of the council of any borough (including a county borough) or of any other urban district, to confer on them, or on some other representative body within the borough or district, all or any of the following matters; namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers duties or liabilities of overseers and any powers duties or liabilities of a parish council. 7 And the Local Government Board may also, in certain cases, confer on an urban district council (but not on a county borough council), or on some representative body within the district, the powers of the vestry in relation to the rating of small tenements. 8

The expenses incurred by an urban district council in the execution of the additional powers conferred on (1) Sects. 56, 57. (5) Sect. 9.

(2) Sect. 27. (6) Sects. 53, 62.

(3) Sect. 32. (7) Sect. 33.

(4) Sect. 26. (8) Sect. 3-i.

Introduction. xlvii them by the Act are to be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying expenses under the Public Health Act. 1 The existing provisions as to the accounts of an urban sanitary authority and the audit of such accounts are but slightly altered. 2

Boards of guardians. â It has already been mentioned that ex officio and nominated guardians are to be abolished, that guardians for parishes in urban districts, county boroughs, and London are to be elected by the parochial electors of the parishes; and that in a rural district guardians as such are not to be elected, but that the rural district councillors elected for a parish or other area will represent the parish or area on the board of guardians.

A board of guardians are empowered to add to their number by selection from outside to a greater extent than other authorities under the Act. They are to have power to elect from outside their own body not only their chairman but also a vice-chairman, and not more than two other persons: and it is provided that, on the first election, if a sufficient number of persons who have been *ex officio* or nominated guardians of the union, and have actually served as such, are willing to serve, the additional members shall be elected from among those persons. 3

The provisions of the Act as to the number, term of office, constitution and election of guardians have been mentioned.

To be qualified to be elected or to be a guardian a person must either be a parochial elector of some parish within the union, or have resided within the union during the whole of the twelve months preceding his election, or, in the case of a guardian for a parish situate wholly or partly within a borough, be qualified to be elected a councillor for that borough. 4 There are certain disqualifications for the office, 5 but neither sex nor marriage is to disqualify a woman for the office of guardian. 6

A board of guardians is assimilated to a borough council as regards acceptance of office, re-eligibility of holders of office and the filling of casual vacancies, and, subject however to a provision enabling the Local (1) Sect. 28. (4) Sect. 20 (2).

(2) Sect. 58. (5) Sect. 40.

(3) Sects. 20 (7), 59. (6) Sect. 20 (2).

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Government Board to continue the existing arrangements in this respect, as regards expenses of elections. 1

The provisions of the Public Health Act as to meetings and proceedings of a local board are applied to boards of guardians as well as to district councils; but the Act contains a saving for the powers of the Local Government Board as to the proceedings of guardians. 2

Except that they will in some cases lose their powers of dealing with parish property, 3 the functions of a board of guardians are hardly affected by the Act. 4

Metropolitan authorities.â The provisions of the Act with respect to the qualification of the electors of urban district councillors, and of the persons to be elected, and with respect to the mode of conducting the election, are to apply as if members of the local board of Woolwich and of the vestries elected under the Metropolis Management Acts were urban district councillors. 5

Members of these authorities will therefore be elected by the parochial electors of the parish, or, where the parish is divided into wards, by the parochial electors of each ward. 6 The election will be conducted under rules framed by the Local Government Board, and the Ballot Act, and certain other enactments relating to municipal elections will, with modifications, apply. 7 And to be qualified to be elected to or to hold office as a member of any of the authorities a person must either be a parochial elector of the parish, or have resided in the parish during the whole of the twelve months preceding the election. Apparently also a woman will not be disqualified by sex or marriage for membership of such an authority. 8

The provisions of the Act disqualifying certain persons for the office of district councillor, 9 and the provisions assimilating district councils to borough councils, as

regards the expenses of elections, acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, 10 are likewise applicable to the authorities in question. 11

The first elections of members of the authorities in question will be held in the autumn of the present year. 12 No election will be held in 1895; but in 1896, and in subsequent years, elections will be held on the same (1) Sect. 48 (4). (G) Sect. 23 (3).

(2) Sect. 59. (7) Sects. 23 (5), 48.

(3) Sect. 6 (1, d â (S) Sect. 23 (2).

(4) With regard to functions of (9) Sect. 46. guardians under local Acts, see (10) Sect. 48 (4).

sect. 60 (5). (11) Sects. 46 (9), 48 (4).

(5) Sect. 31 (1). (12) Sect. 84 (1).

Introduction. xlv dates as heretofore, one-third of the members retiring each year. The Act contains the necessary provisions for determining which of the members elected in 1894 shall retire in 1896, 1897, and 1898 respectively. 1

After the first vestrymen elected under the Act come into office, no person is to be ex officio chairman of a vestry under the Metropolis Management Acts; but each of the vestries, except those electing district boards, and the local board of Woolwich, are, at their first meeting after the annual election of members, to elect a chairman for the year, apparently from among their own number. 2

The provisions of the Act with respect to the qualification of urban district councillors are extended to members of district boards of works, 3 and it is provided that every district board of works shall, at their first meeting after the annual election of members, elect a chairman for the year, apparently from among their own number. 4 The method of electing these bodies is however unaffected.

A chairman of a metropolitan vestry or of a district board of works elected for the year under the Act, unless a woman or personally disqualified, is to be ex officio a justice of the peace for the county of London. 5

The functions of the authorities above-mentioned are not directly affected by the Act; but the provisions of sect. 33, under which the Local Government Board may make an order conferring certain functions on an urban district council or on some other representative body in an urban district, apply in London as if the district of each sanitary authority in the administrative county of London were an urban district, and the sanitary authority were the council of that district. 6

The Act further contains provisions, it should be mentioned, as to the election and qualification of auditors of London parishes elected under the Metropolis Management Acts. 1

Areas and Boundaries.

The main provisions of the Act with regard to areas and boundaries are contained in sect. 36. And in the note to that section a somewhat full discussion will be found both of the section itself and of the other provisions (1) Sect. 79 (6, 7, 10). (5) Sects. 22, 32 (2).

(2) Sect. 31 (2). (6) Sect. 33 (G).

(3) Sect. 31 (1). (7) Sects. 31 ( ), 4G (9), 48 (3).



(4) Sect. 31 (2). â u xlvi Introduction.

of the Act concerning the matter. A very brief outline of the scheme of the Act as to areas and boundaries will therefore suffice at this point.

The provisions in question are directed towards the following objects:â 1st. That every parish shall be wholly comprised within one administrative county or county borough.

2nd. That every parish in an administrative county shall be wholly comprised within one county district.

3rd. That every county district shall be wholly comprised within one administrative county.

4th. That there shall be no rural district so small as not to have at least five elective district councillors.

In order that these objects may as far as is reasonably practicable be attained, the Act makes provisions of two kinds:â

In the first place it requires the county councilsâ and in the Act the expression county council includes a county borough council â to take into consideration every case where a rectification of boundary is required to attain the objects in question, and to make such orders (if any) as they may deem most suitable for carrying the Act into effect in accordance with the following provisions:â 1st. " The whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county; 2nd. " The whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district; and 3rd. "Every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts." 1

Secondly, the Act contains provisions that will, unless the case be dealt with in the meantime, have the effect of dividing, as from the appointed day, any parish that was at the passing of the Act partly within and partly without a rural sanitary district; and also, unless the county council otherwise direct, every parish that was at that date situate in more urban districts than one, and every rural sanitary district that was at that date situate in more administrative counties than one. 2 (1) Sect. 36 (1). (2) Sects. 1 (3), 36 (2).

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In order to enable the county and county borough councils to carry out the duties imposed on them in relation to areas and boundaries, the provisions of the Local Government Act, 1888, relating to boundaries are, with important modifications and additions, made available. 1

Effect of the Act on Existing Authorities and Officers.

Vestries. â All powers, duties, and liabilities of the vestry of a rural parish, except so far as they relate to the affairs of the church or to ecclesiastical charities, are taken from the vestry; and are transferred, with the exception in general of powers, duties, and liabilities relating to highways, in part to the parish meeting, and in part to the parish council, or, in a parish with no parish council, to the parish meeting. 2

Any functions the vestry may have in relation to highways will, upon the transfer of the powers of the highway authority to the rural district council, also vest in that



council." Where, however, the transfer of the functions of a highway authority to the rural district council is postponed, these functions will be transferred to the parish council, if there is one, or to the parish meeting if the parish has no parish council. 3

Where the vestry of a rural parish are entitled, under the trusts of any charity, other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment is to be made by the parish council of the parish, or, in the case of beneficiaries, by persons appointed by the parish council. 4 And accounts of parochial charities, other than ecclesiastical charities, are to be laid before the parish meeting instead of before the vestry. 5

The vestry will, however, confine to exist, unaffected in any respect by the Act, for the purpose of transacting the business that is left them.

In general the functions of the vestry of a parish in an urban district or a county borough are practically unaffected by the Act; but the vestry of such a parish may be deprived of certain of their functions by an order of the Local Government Board made under the provisions referred to, ante, p. xlii.

(1) Sect. 36, and see sects. 40-42, (3) See further, p. 116. 80 (2). (4) Sect. 14 (4).

(2) Sects. 6 (1, a), 19 (4). (5) Sect. 14 (6).

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Overseers. â In every rural parish the overseers are in future to be appointed either by the parish council or by the parish meeting, 1 and provisions are made to meet cases where a parish council or parish meeting fail to make the appointment. 2

Churchwardens in rural parishes will cease, as from the appointed day, to be ex officio overseers, and provision is made under which an additional number of overseers may be appointed to replace the churchwardens. The appointing of such additional overseers is, however, optional with the parish council or parish meeting. 3

Neither the appointment of overseers, nor the position of churchwardens as ex officio overseers for a parish not in a rural district is directly affected by the Act. But the Local Government Board are empowered to confer the appointment of overseers upon the district council of an urban district or upon some other representative body within such a district; and like provisions are made as regards county boroughs and London. 4

The overseers appointed for a rural parish in the spring of the present year will hold office till the spring of next year, and it will devolve upon them to convene the first parish meeting in the autumn of the present year.

Certain powers of the overseers of a rural parish with a parish council are transferred to the parish council. 5 And the Local Government Board are empowered to confer any functions of overseers in an urban district upon the district council or some other representative body, and to make like provisions as regards county boroughs and London. 6

In a rural parish not having a separate parish council, the overseers, together with the chairman of the parish meeting, will, subject if the parish is grouped to the provisions of the grouping order, constitute a corporate body with power to hold land for the purposes of the parish. 7

The legal interest in the property vested in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the

church or held for an ecclesiastical charity, will, on the appointed day, vest in the parish council if (1) Sects. 5 (1), 19 (5). (5) Sect. 6 (1, c).

(2) Sect. 50. (6) Sect. 33.

(3) Sect. 5 (2). (7) Sect. 19 (6).

(4) Sect. 33.

Introduction. xqx there is one; or, if there is no parish council, in the corporate body of the chairman and overseers established as above mentioned. 1

Churchwardens. Churchwardens in rural parishes will cease, as from the appointed day, to be ex officio overseers. 2 Their remaining functions, other than such as relate to the affairs of the church or to charities, are in a parish with a parish council to be transferred to that council. 3 And where churchwardens as such are trustees of a parochial charity, the parish council may in some cases appoint trustees in their stead.

4

The Act does not in any case affect the election of churchwardens nor their functions in relation to the affairs of the church or to ecclesiastical charities. Nor does it directly affect any of the functions of churchwardens in urban districts, county boroughs, or London; though, of course, the functions of such churchwardens might be affected by an order of the Local Government Board made under the provisions referred to, ante, p. xlii.

Assistant overseers. In a rural parish the power of appointing and of revoking the appointment of an assistant overseer will in all cases vest either in the parish meeting or in the parish council. 5

The Act does not directly affect the power of the vestry of a parish not in a rural district to appoint or revoke the appointment of an assistant overseer; but the Local Government Board are empowered to confer the appointment and the revocation of the appointment of assistant overseers in an urban district upon the district council or upon some other representative authority; and similar provisions are made as regards county boroughs and London. 0

The guardians will in future in no case have power to appoint an assistant overseer.

7

An assistant overseer in a rural parish is in certain cases to act as clerk to the parish council, and in such case the performance of the duties of that office is to be taken into account in determining his salary. 8

An existing assistant overseer of a rural parish will, unless he was appointed by the guardians, become an officer of the parish council, 9 and he will also come (1) Sects. 5 (2), 19 (7). (5) Sects. 5 (1), 19 (5).

(2) Sect. 5 (2). (6) Sect. 33.

(3) Sect. G (1, b). (7) Sect. 81 (6).

(4) Sect. 14 (2); see further as to (8) Sect. 17. this, post, p. liii. (9) Sect. 81 (3).

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within the operation of the provisions relating to existing officers mentioned, post, p. li.

Authorities under the adoptive Acts. 1 Where the area under the jurisdiction of an authority acting in the execution of any of these Acts is co-extensive with a rural

parish having a parish council, the functions of the authority are transferred to the parish council as from the coming into office of that council. 2

Where such an area will not after the appointed day be comprised within one rural parish, the functions of the authority are to be transferred to the parish councils of the rural parishes wholly or partly comprised in the area; or, if the area is partly comprised in an urban district, to the parish councils and the district council of the urban district. And it is enacted that where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council. 3 Where the functions of such an authority are thus transferred to several bodies jointly, they are to be discharged by a joint committee till other provision is made. 4

Where an area under such an authority forms part of a rural parish, the authority in question, or a parish meeting for that part of the parish, may transfer the functions of the authority to the parish council; but such a transfer is not effected directly by the Act. 5

The county council are empowered, in some cases, to alter the boundaries of an area in which any of the adoptive Acts is in force on the appointed day. 6

Sanitary authorities, boards of guardians, metropolitan authorities, and highway boards. â The effect that the Act will have, on coming into full operation, on these bodies has been traced in outline. The provisions of the Act as regards persons who are at present members and officers of these authorities, and as regards the duties of such authorities before the appointed day, are very clearly stated in the circular letters of the Local Government Board, which will be found post, pp. 409-428.

County and county borough councils. â The Act does not affect the constitution or method of election of county (!) The " adoptive Acts" are the same: see sect. 7 (1).

Lighting and Watching Act, 1833, (2) Sect. 7 (5).

the Baths and Washhouses Acts, (3) Sect. 53 (2).

the Burial Acts, the Public Im (4) lb.

provement Act, 1860, and the (5) Sect. 53 (1).

Public Libraries Act, 1892, to (6) Sect. 53 (4). gether with any Acts amendidg the

Introduction. li councils, nor does it materially affect their existing powers and duties, except in relation to alterations of areas and boundaries, and matters arising under the Allotments Acts. The more important new powers and duties conferred and imposed on county councils by the Act, more particularly such as relate to the bringing of the Act into operation, are clearly stated in the circular letter of the Local Government Board which will be found post, p. 414.

County borough councils, as has been seen, will have certain of the new functions attaching to urban district councils. 1 They will also, inasmuch as the expression county council in the Act includes a county borough council, have such of the functions of county councils under the Act, as are not from their nature inapplicable within a county borough.

Existing officers. â The principal provisions of the Act as to existing officers are contained in sect. 81. That section, besides making certain special provisions as to highway surveyors, vestry clerks, and assistant overseers, providesâ 1st. That where the powers and duties of any authority other than justices are transferred by the Act to a parish or district council, the officers of that authority shall become officers of



that council. 2 2nd. That any such existing officer shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore. 3 3rd. That sect. 120 of the Local Government Act, 1888, which relates to compensation to existing officers, shall, with the necessary modifications, apply in the case of existing officers affected by the Act. 4 It is further provided that where the Local Government Board make an order under sect. 33, 5 the order shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers. 6 (1) Ante, p. xlii. will be found at length in the note (2) Sect. 81 (1). to that section, p. 255.

(3) Sect. 81 (4). (5) See ante, p. xlii.

(4) Sect. 84 (7). Sect. 120 of (6) Sect. 33 (4). the Local Government Act, 1888, Allotments and Charities.

Allotments. â The scheme of the Act in relation to allotmentsâ using the expression " allotments " in the modern sense as meaning small parcels of land let or intended to be let to members of the labouring classesâ may be summed up as follows:â

In the first place provisions are made which will in almost all cases transfer to the parish council of a rural parish any allotments held or managed for the benefit of the parish in accordance with the earlier Acts relating to allotments. 1

Secondly, the Act materially amends the Allotments Act, 1887, as regards the compulsory purchase of land for allotments. 2 In this respect probably the most salient features of the Act are that the necessity of applying to Parliament where it is desired to obtain compulsory powers for the purpose is done away with, and that, where such powers have been obtained, no allowance, in assessing the compensation to the landowner, is to be made in respect of the purchase being compulsory.

Thirdly, the Act enables the parish council to hire land for allotments and enables an order to be made, if necessity arises, authorising them to hire land for the purpose compulsorily. 3

Charities. â The main provisions of the Act with regard to charities are contained in sect. 14. It is not proposed to give a full account of these provisions at this point, as such an account would involve setting out that lengthy section practically verbatim. A few observations on the provisions of the section as to the appointment of charity trustees, may, in view of the great interest that these provisions have aroused, not be out of place.

In the first place, where the vestry of a rural parish are entitled to appoint trustees of a charity other than an ecclesiastical charity, the appointment will be made by the parish council. 4

Secondly, it is provided that " where overseers of a rural parish as such are, either alone or jointly with any (1) Sect. 6 (1, c. Hi.), (4). The (2) Sect. 9, and see sect. 6 (8).

Acts in question form a most con The provisions of the Act in this fused and tangled body of legisla respect are somewhat fully dealt tion. Some attempt to give an with in the note to sect. 9. outline of iheir provisions is made (3) Sect. 10.

in the note to sect. tj. (4) Sect. 14 (4).



Introduction. liii other persons, trustees of any parochial charity, such number of the councillors of the parish or other persons, not exceeding the number of the overseer trustees, as the council may appoint, shall be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers." 1

It was universally assumed throughout the long debates to which this enactment gave rise in Parliament, that it would apply in the case of any non-ecclesiastical charity, of which churchwardens as such were trustees; and that is the construction which the author would place on the enactment. At the same time he thinks it right to state that a friend of his of considerable eminence at the bar has expressed to him the opinion that such is not the true construction of the enactment; but that the whole enactment is governed by the initial words, and that it applies, therefore, as regards churchwardens, only where overseers also are trustees of the charity. The power of appointing trustees of a charity in lieu of overseers or churchwardens attaches to the parish meeting where there is no parish council. 2

Thirdly, provisions are made under which, where there is no representative element on the governing body of a parochial charity, not being an ecclesiastical charity, the parish council will be entitled to appoint additional members of the governing body. And it is provided that where the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by the sole trustee, and one by the parish council or parish meeting. 3

It will be observed that if the Act has not the effect of enabling the parish council to appoint trustees in place of churchwarden trustees, except where the overseers also are trustees, the parish council will in a very large number of cases be unrepresented on the governing body, as wherever a churchwarden elected by the meeting is a trustee he constitutes a representative element on the governing body, so that the provisions enabling a parish council to appoint additional members of a governing body on which there is no representative element would not apply.

The provisions above mentioned as to the appointment of trustees, except so far as the appointment is transferred (1) Sect. 14 (2). (2) Sect. 19 (5). (3) Sect. 14 (3).

from the vestry, are not to apply to any charity until the expiration of forty years from the date of the foundation, or, in the case of a charity founded before the passing of the Act by a donor or by several donors any one of whom was living at the passing of the Act, until the expiration of forty years from the passing of the Act, unless with the consent of the surviving donor or donors. 1 Nor will any of the provisions in question apply to the trusteeship of an elementary school. 2

It remains to mention that the Act contains somewhat elaborate definitions of the expressions "ecclesiastical charity" and "parochial charity." 3 (1) Sect. 14 (8). (2) Sect. 6G. (3) Sect. 75 (2).

LOCAL GOVERNMENT ACT, 1894.

56 57 Vict. c. 73.

An Act to make further provision for Local Government in 56 57 Vict. England and Wales. 5th March, 1894. c. 73, s. 1.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PAET I.

Parish Meetings and Parish Councils.

Constitution of Parish Meetings and Parish Councils.

Sect. 1.â (1.) There shall be a parish meeting for Constitution every rural parish, and there shall be a parish council of PJJj and for every rural parish which has a population of three gstablish-hundred or upwards: Provided that an order of the men t 0 f county council in pursuance of Part III. of this Actâ parish coun-(a) shall, if the parish meeting of a rural parish Clls-having a population of one hundred or upwards so resolve, provide for establishing a parish council in the parish, and may, with the consent of the parish meeting of any rural parish having a population of less than one hundred, provide for establishing a parish council in the parish; and (6) may provide for grouping a parish with some neighbouring parish or parishes under a common parish council, but with a separate parish meeting 56 57 Vict. for every parish so grouped, so, however, that c- 73. s. 1. n0 parish shall be grouped without the consent of the parish meeting for that parish. (2.) For the purposes of this Act every parish in a rural sanitary district shall be a rural parish.

(3.) Where a parish is at the passing of this Act situate partly within and partly without a rural sanitary district, the part of the parish which is within the district, and the part which is without, shall as from the appointed day, but subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law 39 40 Vict. Amendment Act, 1876, and the Acts amending the c 61 same.

Note. Parish meeting. â The expression " parish " in the present Act means a parish for poor law purposes, that is, broadly speaking, a parish, township, tithing, or other area with independent overseers; 1 and it is for such a parish only that a parish meeting is established by the present section. The Act, however, contains provisions under which, in certain cases, a parish meeting may be held for part of a parish. 2

Parish council. â The question whether a parish is to have, or to be entitled to have if the parish meeting so resolve, a parish council will, under sect. 75 (2), depend on the population of the parish according to the census of 1891. Alterations to meet future changes of population are provided for by sect. 39.

Parish co-extensive with rural sanitary district. â Sect. 36 (4) provides that, unless the county council otherwise direct, a separate election of a parish council for a parish in this position shall not be held until the district is united to some other district or districts, but that the district council shall have, in addition to their own powers, the powers of a parish council.

Grouping of parishes. â It is to be observed that, though the provisions of the Act with regard to the grouping of parishes are no doubt intended chiefly to meet the needs of small parishes, parishes of any size may be grouped. With regard to the respective functions of the parish meeting and the parish council where a parish is grouped, see sect. 19, and the note to that section. And as to grouping orders generally, see sects.

38-40 and 55 (1). Provisions exist under which parishes may, by order of a county council, be united, so as to form, for all civil purposes, a single parish. 3 An order uniting parishes under these provisions must not be confused with a grouping order.

(1) See the note to sect. 36, post. (3) See sect. 36, and the note to (2) See e. g. sects. 7 (4), 18. that section, post.

Parish situate in more than one sanitary district. As to the 56 57 Vict, powers of county councils to adjust areas for the purposes of c 73 s-1 "the Act, and as to the consequences of a subdivision of an area effected by the Act, see sect. 36 and the note to that section. Sub-sect. (2) of sect. 36 contains provisions similar to those in sub-sect. (3) of the present section dealing with a parish situate in two or more urban districts.

Appointed day. As to the appointed day see sect. 84 (4).

Sect. 2. (1.) The parish meeting for a rural parish Parish meet-shall consist of the following persons, in this Act referred to as parochial electors, and no others, namely, the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish.

(2.) Each parochial elector may, at any parish meeting, or at any poll consequent thereon, give one vote and no more on any question, or, in the case of an election, for each of any number of persons not exceeding the number to be elected.

(3.) The parish meeting shall assemble at least once in every year, and the proceedings of every parish meeting shall begin not earlier than six o'clock in the evening.

(4.) Subject to the provisions of this Act as to any particular person being the chairman of a parish meeting, the meeting may choose their own chairman.

(5.) A poll consequent on a parish meeting shall be taken by ballot.

(6.) The reasonable expenses of and incidental to the holding of a parish meeting or the taking of a poll consequent thereon shall be defrayed as hereinafter provided.

(7.) With respect to parish meetings the provisions in the First Schedule to this Act shall have effect.

Note. Parochial Electors. The Interpretation Act, 1889 1 defines the expression "parliamentary register of electors" as meaning "a register of persons entitled to vote at any parliamentary election," and the expression "local government register of electors" as meaning, "as respects an administrative county in England or Wales other than a county borough, the county register, and as respects a county borough or other municipal borough, the burgess roll." The "burgess roll" in a municipal borough is the authoritative list of the persons enrolled as burgesses, who alone are entitled to vote at the election of the borough councillors. 2 The county register for a county is similarly the authoritative list of persons entitled to (1) 52 53 Vict. c. 63, s. 17. 1882 (45 46 Vict. c. 50), ss. 9 (1), (2) Municipal Corporations Act, 45 (8), 51.

56 57 Vict, vote at the election of the county councillors; it includes the c 73, s. 2, n. burgesses enrolled on the burgess rolls of the boroughs in the county and persons registered as "county electors" for the remainder of the county. 1

The meaning of the expression "parochial elector" is, it should be observed, by sect. 75 (2), extended so as to include persons on the registers relating to any parish whether a rural parish or not.



The statutes relating to the qualification and registration of electors are of great complexity, and it is beyond the scope of the present work to discuss their provisions at length. The following is a brief list of the qualifications entitling a person to be placed on the register.

Qualifications for registration as a parliamentary elector for a county. These are:—  
 (i.) Ownership qualifications: i. e., qualifications in respect of the ownership of property whether of freehold, copyhold, or leasehold tenure. 2 (ii.) Fifty pounds rental qualification: i. e., a qualification in respect of the occupation as tenant of land at a rental of fifty pounds or more. 3 This qualification is only enjoyed by persons already on the register in respect of the same qualification in 1884 and is of small and diminishing importance.

(iii.) Ten pounds occupation qualification. This is similar to the ten pounds occupation qualification for a borough mentioned below; but the conditions of the qualifications are slightly different in the two cases. 4 (iv., v.) The household qualification and the lodger qualification. These are precisely similar to the corresponding qualifications for a borough mentioned below. 5

Qualifications for registration as a parliamentary elector for a borough. These are:—  
 (i.) Qualifications in respect of "reserved rights." The Reform Act, 1832, 6 while introducing a uniform occupation franchise for parliamentary boroughs, reserved certain of the various ancient rights of voting existing in boroughs then (1) County Electors Act, 1888 c. 102, s. 40; 41 42 Vict. c. 26, (51 Vict. c. 10), ss. 2, 3, 7; County s. 7; 48 Vict. c. 3, ss. 10, 12; 48 Councils (Elections) Act, 1891 (54 Vict. c. 15, ss. II, 12, 19; 48 49 55 Vict. c. 68), s. 2. Vict. c. 46.

(2) 8 Hen. VI. c. 7; 10 Hen. VI. (4) 30 31 Vict. c. 102. ss. 6, c. 2; 18 Geo. II. c. 18; 20 Geo. 26, 27, 40; 32 33 Vict. c. 41, III. c. 17, s. 12; 2 Will. IV. c. 45, ss. 7, 15, 19; 41 42 Vict. c. 26, ss. 18, 20, 21, 23-26; 6 Vict. c. 18, ss. 5, 7, 14; 42 Vict. c. 10; 48 s. 74; 30 31 Vict. c. 102, ss. 5, Vict. c. 3, ss. 5, 6, 7 (6) (8), 10, 4A, 56, 59; 41 42 Vict. c. 26, 11, 12; 48 Vict. c. 15, s. 12; 48 s. 7; 48 Vict. c. 3, ss. 4, 10, II; 49 Vict. c. 46.

48 Vict. c. 15, ss. II, 12; 48 49 (5) 48 Vict. c. 3, ss. 2, 6, 7 (1)

Vict. c. 46. (2), 9 (8) (9), 10; 48 49 Vict.

(3) 2 Will. IV. c. 45, ss. 20, 26; c. 46; 54 Vict. c. 11.

6 Vict. c. 18, s. 73; 30 31 Vict. (6) 2 Will. IV. c. 45.

sending representatives to Parliament, 1 and qualifications in 56 57 Vict, respect of these reserved rights are still exercised. A notable c- 73. s. 2, n. instance is in the case of the City of London. It would seem that persons registered as parliamentary electors in respect of reserved rights will not be parochial electors, since the portion of the register in which their names are inserted is not prepared separately for the several parishes, and indeed could not be so prepared as in many cases the qualification does not depend on the possession or occupation of property and could therefore not be regarded as relating to any particular locality within the borough.

(ii.) The ten pounds occupation qualification. This is a qualification in respect of the occupation as owner or tenant of some land or tenement of the clear yearly value of not less than;— 2 (iii.) The household qualification. This is a qualification in respect of the occupation as inhabitant occupier of a dwelling-house or of some part



of a house separately occupied as a dwelling. 3 (iv.) The lodger qualification. This is a qualification in respect of the occupation as a lodger of lodgings of the clear yearly value, if let unfurnished, of "10 or upwards. 4

Qualifications for registration as a local government elector. These are: (i.) The old burgess qualification: i. e., in respect of the occupation as owner or tenant of a "house, warehouse, counting-house, shop, or other building." 5 (ii.) The ten pounds occupation qualification. This differs little from the corresponding parliamentary qualification. 6

Women as parochial electors. Women are absolutely disqualified to be parliamentary electors, 7 but their sex does not (1) As to these reserved rights, ss. 7, 15, 19; 41 Vict. c. 3; 41 see 2 Will. IV. c. 45, ss. 31-33, 42 Vict. c. 26, ss. 5, 7, 14; 42 35, 36; 6 Vict. c. 18, ss. 76, 78; Vict. c. 10; 48 Vict. c. 3, ss. 3, 9 30 31 Vict. c. 102, ss. 46, 56; (8) (9), 10; 48 Vict. c. 15, s. 12; 41 42 Vict. c. 26, s. 7; 45 46 48 49 Vict. c. 23, s. 10; 48 49 Vict. c. 50, s. 209; 48 Vict. c. 3, Vict. c. 46; 54 Vict. c. II.

s. 10; 48 Vict. c. 15, s. 12 j 48 (4) 30 31 Vict. c. 102, ss. 4, 49 Vict. c. 23, ss. 7, 13 (3); 48 40; 41 42 Vict. c. 26, ss. 5, 6, 7; 49 Vict. c. 46. 48 Vict. c. 3, ss. 2, 7 (3), 10; 48 (2) 2 Will. IV. c. 45, ss. 27-30, Vict. c. 15, s. 12; 48 49 Vict. 36; 6 Vict. c. 18, ss. 75, 76; II c. 46; 54 Vict. c. II.

12 Vict. c. 90; 14 15 Vict. (5) 45 46 Vict. c. 50, ss. 9, c. 14; 30 31 Vict. c. 102, ss. 7, 31-33, 63; 51 Vict. c. 10, s. 2; 26, 46; 32 33 Vict. c. 41, ss. 7, and see 32 33 Vict. c. 41, ss. ", 15, 19; 41 42 Vict. c. 26, ss. 5, 15, 19; 41 42 Vict. c. 26, s. 14; 7, 14; 42 Vict. c. 10; 48 Vict. 42 Vict. c. 10; 48 49 Vict. c. 9; c. 3, ss. 5, 7 (7) (8), 10, 11; 48 Vict. 48 49 Vict. c. 46; 54 Vict. c. 11, c. 15, s. 12; 48 49 Vict. c. 23, ss. (6) 51 Vict. c. 10, s. 3.

IO 13 (3) 14; 48 49 Vict. c. 46; (7) Chorlton v. Lings (1868), 54 Vict. c. 11. L. R. 4 C. P. 374; 38 L. J. C. P.

(3) 30 31 Vict. c. 102, ss. 3, 25; 19 L. T. 534; 17 W. K. 284; 26, 40, 61; 32 33 Vict. c. 41, 1 Hopw. C. 1.

56 57 Vict. disqualify them to be enrolled or to vote as burgesses or county c 73, s. 2, n. electors, at all events in respect of the old burgess qualification. 1 Whether a woman can be enrolled as a burgess or county elector, in respect of the Qio occupation qualification, is doubtful. 2 Marriage, however, has hitherto disqualified a woman for enrolment as a local government elector. 3 Sect. 43 of the present Act removes, "for the purposes of this Act," the disqualification for registration as a local government elector hitherto entailed on a woman by marriage, subject to a provision that husband and wife are not both to be qualified in respect of the same property. That section will not, however, apparently authorise a married woman to vote at an election of borough or county councillors.

Registration of electors. The law relating to the registration of electors is amended for the purposes of the present Act by sect. 44; and provisions relating to the registration of electors in cases where alterations of boundary are effected before the first elections are held under the Act are contained in sect. 84. In the course of the debates on the Act the President of the Local Government Board stated, on the 5th January, 1894, that it was the intention of the Government to bring in a bill for the purpose of accelerating the registration of electors in the present year, so as to

enable the first elections under the Act to be held at the time provided for by the last-mentioned section. 4

Conclusiveness of register. â Sect. 44 (1) provides that any person whose name is not in the register of parochial electors shall not be entitled to attend a meeting or vote as a parochial elector, and that any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by statute.

Assembly of parish meeting. â The annual assembly of the parish meeting is, under the first schedule, part i. (1), to be held on the 25 th March, or within seven days before or after that date. In a parish not having a separate parish council, the parish meeting is, under sect. 19 (2), subject, if the parish is grouped, to the provisions of the grouping order, to assemble at least twice a year. Provisions as to the convening of a parish meeting, notices to be given prior to an assembly of the parish meeting, c, are contained in sects. 45 and 51, and in part i. of the first schedule.

The first parish meeting for a parish is to be convened by the overseers, on the 8th November, 1894, or on such later date in 1894, as the Local Government Board may fix: see sects. 78 (1), 84 (1). And the county council are empowered (1) Municipal Corporations Act, 7 Q. B. 361; 41 L. J. Q. B. 173; 1882 (45 46 Vict. c. 50), s. 63. 26 L. T. 616; 20 W. R. 328.

(2) See the County Electors Act, (4) See Parliamentary Debates, 1888 (51 Vict. c. 10), s. 3. 4th Series, vol. 20, p. 927.

(3) Reg. v. Harrauld (1872), L. R.

by sect. 80 (1) to remove any difficulties that may arise as to 56 57 Vict, the holding of the first parish meeting. c- 73. s- 2 Â n-

Schoolrooms and rooms maintainable out of local rates are in certain cases made available for the assembly of the parish meeting by sect. 4; and by sect. 61 a parish meeting is not, except where no other suitable room is available, either free of charge or at a reasonable cost, to be held in premises licensed for the sale of intoxicating liquor.

Chairman of parish meeting. â By sect. 45 (2) the chairman of the parish council, if he is present and not a candidate for election at the meeting, is, save as otherwise provided by the Act, to be the chairman of the parish meeting. In a parish not having a separate parish council the parish meeting is, by sect. 19 (1), subject, if the parish is grouped, to the provisions of the grouping order, to choose a chairman for the year at their annual assembly. By the first schedule, part i. (10) provision is made for the appointment of a temporary chairman of a parish meeting if the regular chairman is absent or unable or unwilling to act.

Poll consequent on a parish meeting. â With regard to the demand of a poll, see the first schedule, part i. (5) (6) (7). As to the manner of taking the poll, see sect. 48 and the note to that section.

Expenses of holding parish meeting and of poll consequent thereon: â As to these expenses, see sect. 11 (4).

Sect. 3. â (1.) The parish council for a rural parish Constitution shall be elected from among the parochial electors of that of parish parish or persons who have during the whole of the council â twelve months preceding the election resided in the parish,

or within three miles thereof, and shall consist of a chairman and councillors, and the number of councillors shall be such as may be fixed from time to time by the county council, not being less than five nor more than fifteen.

(2.) No person shall be disqualified by sex or marriage for being elected or being a member of a parish council.

(3.) The term of office of a parish councillor shall be one year.

(4.) On the fifteenth day of April in each year (in this Act referred to as the ordinary day of coming into office of councillors) the parish councillors shall go out of office, and their places shall be filled by the newly elected councillors.

(5.) The parish councillors shall be elected by the parochial electors of the parish.

(6.) The election of parish councillors shall, subject to the provisions of this Act, be conducted according to 56 57 Vict, rules framed under this Act for that purpose by the c 73. s- 3- Local Government Board.

(7.) The parish council shall in every year, on or within seven days after the ordinary day of coming into office of councillors, hold an annual meeting.

(8.) At the annual meeting, the parish council shall elect, from their own body or from other persons qualified to be councillors of the parish, a chairman, who shall, unless he resigns, or ceases to be qualified, or becomes disqualified, continue in office until his successor is elected.

(9.) Every parish council shall be a body corporate by the name of the parish council, with the addition of the name of the parish, or if there is any doubt as to the latter name, of such name as the county council after consultation with the parish meeting of the parish direct, and shall have perpetual succession, and may hold land for the purposes of their powers and duties without licence in mortmain; and any act of the council may be signified by an instrument executed at a meeting of the council, and under the hands or, if an instrument under seal is required, under the hands and seals, of the chairman presiding at the meeting and two other members of the council.

(10.) With respect to meetings of parish councils the provisions in the First Schedule to this Act shall have effect.

Note. Qualification of parish councillor. â It will be observed that no continuing qualification is required to entitle a person to hold the office of parish councillor. A parish councillor, duly qualified at the time of his election, may hold office till the next election, though he cease to be a parochial elector and reside beyond the three-mile limit.

Residential qualification. â The meaning of the word "reside" and its derivatives cannot be stated with any great degree of exactness. Bayley, J., 1 said that the word residence "where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep." The meaning put upon the expression in different statutes has however varied considerably according to the object and scope of the particular enactment in question.

Residence for a certain "qualifying period" within given limits is required as a condition of certain electoral qualifications; and the decisions as to the meaning of residence in the (I) Reg. v. North Curry inhabi- p. 959; S. C. 7 D. R. 424. fonts) (1825), 4 B. C. 953, at



Acts relating to such qualifications will no doubt be followed 56 57 Vict, in construing the present section. c- 73 s- 3 n-

The following passage in Elliott on Registration I with regard to the meaning of residence in these Acts has more than once been referred to with approval 2:â " The rule upon this subject may perhaps be stated thus: that in order to constitute residence, a party must possess at least a sleeping apartment; but that an uninterrupted abiding at such dwelling is not requisite. Absence, no matter how long, if there be liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence. But if he has debarred himself of the liberty of returning to such dwelling by letting it, for a period however short, or has abandoned his intention of returning, he cannot any longer be said to have legal residence there."

Subject to the general principles thus stated the question whether a person has resided in a given place during the qualifying period is mainly a question of fact, depending upon all the circumstances of the case. 3

A person may, it should be mentioned, have more than one residence. 4

A brief account of the decided cases is subjoined; they are however, for the most part merely illustrations of the principles stated above.

Where it appeared that A. resided with his wife and family at G., but paid gd. a week for the use of a bedroom and dark closet at T. where he slept twelve times during the course of six months, and the revising barrister decided that A. had not resided during the six months at T., the Court upheld the barrister's decision. 5

It was held that a man's residence was broken where he was imprisoned for a crime in a gaol beyond the specified limits. 6

A man who was employed as attendant upon a gentleman and for whom lodgings were taken in the same house with the gentleman where he might and usually did sleep, but where he was not by his agreement bound to sleep, but who also had lodgings at C. where his family resided and where he could sleep at any time and did in fact sleep at least once a week, was held to have resided at C. 7 (1) 2nd edition, p. 204. 783; I Lutw. Reg. Cas. 125; 14 (2) Powell v. Guest (1864), 18 L. J. C. P. 38; 8 Jur. 1008.

C. B. (N. s.) 72, at p. 80; S. C. 34 (4) Whithorn v. Thomas, Bond

L. J. C. P. 69; 11 L. T. 599; 10 v. St. George's, Hanover Square,

Jur. (N. s.) 1238; 13 W. R. 274; (overseers), ubi sup.

H. P. 149; Pond v. St. George's, (5) Whithorn v. Thomas, ubi sup.

Hanover Square (overseers) (1870), (6) Powell v. Guest, ubi sup.

L. R. 6 C. P. 312; 40 L. J. C. P. (7) Taylor v. St. Mary Abbot 47; 23 L. T. 494; 19 W. R. 101; (overseers) (1870), L. R. 6 C. P.

1 Hopw. C. 427. ' 309; 40 L. J. C. P. 45; 23 L. T.

(3) Whithorn v. Thomas (1844), 493; 19 W. R. 100; I Hopw. C. 7 Man. G. 1; 8 Scott N. R. 421.

56 57 Vict. A man who occupied lodgings in a borough, separately and c 73 s- 3 n-as sole tenant, during the qualifying period of twelve months, who also had a house in the country where he kept an establishment of servants all the year round, and who, when in the borough, as he had been at intervals for two months out of the twelve, resided at such lodgings, was held to have had a sufficient residence in the borough. 1



An incumbent was held to have ceased to reside in his rectory where he obtained from the bishop a license for non-residence and went abroad, and a curate went to reside at the rectory under a license to officiate which required him to reside there, it being admitted that the incumbent could not have returned to the rectory without providing some other residence for the curate. 2

A clergyman who, under an arrangement with another clergyman, exchanged duties and residences with the latter for a time, for the purpose of obtaining relaxation and change of scene, was held to have broken his residence. 3

An officer who, when on leave, resided with his mother, and who had no other home, was held to lose his constructive residence at her house, when he was with his regiment, as he was then subject to the will of the Queen and had not the liberty of returning at his pleasure. 4

A man who had rooms kept for him in his father's house, was held to break his residence there, by being absent in London serving under articles to a solicitor. 5

A man who during the qualifying period had in fact resided in a room in a cottage allotted to his wife's mother by the trustees of a charity, was held to have resided there within the meaning of the Reform Act, 1832, 6 though his residence constituted a breach of the rules of the charity. 7

Where it appeared that A. had a bedroom kept for his exclusive use in his father's house at E.; that during the qualifying period he went to London in quest of employment, and having obtained a temporary situation, remained there for two months and then returned to his father's house at E.; that he remained at E. three weeks and then went back to London and, obtaining employment there, did not return to E. during the rest of the qualifying period: it was held that A. had not resided in E. during the qualifying period. 8 (1) *Bond v. St. George's, Hanover Hopw. C.* 167.

*Square overseers*), ante, p. 9. (5) *Ford v. Drew* (1879), 5 (2) *Durant v. Carter* (1873), C. P. D. 59; 49 L. J. C. P. 172; L. R. 9 C. P. 261; 43 L. J. 41 L. T. 478; 28 W. R. 137; C. P. 17; 29 L. T. 681; 22 W. R. Colt. 1.

158; 2 *Hopw. C.* 142. (6) 2 Will. IV. c. 45, s. 33.

(3) *Ford v. Pye* (1873), L. R. 9 (7) *Beatv. Ford* (1877), 3 C. P. D. C. P. 269; 43 L. J. C. P. 21; 29 73 i 47 L- J- C. P. 56; 37 L. T. L. T. 684; 22 W. R. 159; 2 408; 26 W. R. 146.

*Hopw. C.* 157. (8) *Beat v. Exeter town clerk* (4) *Fords. Hart* (1873), L. R. 9 (1887), 20 Q. B. D. 300; 57 L. J. C. P. 273; 43 L. J. C. P. 24; 29 Q. B. 128; 58 L. T. 407; 36 W. R. L. T. 685; 22 W. R. 159; 2 507; 52 J. P. 501; 1 *Fox* 31.

A person was held not to have resided on premises which 56 57 Vict, he occupied, and in which he spent a considerable time daily, c. 73, s. 3, n. except on Sundays, but in which he had slept only twice during the qualifying period on a temporary bed made up on chairs. 1

In a case 2 arising on an enactment 3 which required that to enjoy a certain electoral qualification, a person should, during a certain period have been an " inhabitant householder " within given limits, Blackburn, J., said: " There is no strict or definite rule for ascertaining what is inhabitance or residence. The words have nearly the same meaning. The question is whether there has been such a degree of inhabitance as to be, in substance and in common sense, a residence." In that case a person who

commonly lived in London, but carried on business at E., where he kept offices and some rooms in which he had, during the qualifying period, stayed several times for several days together, was held to be an inhabitant householder at E.

In an earlier case, 4 arising under the same enactment, a man was held to be an inhabitant householder in respect of a house which formed his permanent home, and in which he kept up his establishment of servants, though, owing to fortuitous circumstances, he had slept elsewhere throughout the qualifying period.

In another case 5 on the same enactment, the mayor of a borough, acting as revising officer, held that A., who occupied premises jointly with another, and had the exclusive use of a bed-room in such premises, but habitually slept elsewhere, was not an inhabitant householder in respect of those premises; and the Court refused to reverse the mayor's decision on an affidavit that A. "sometimes" slept at the premises in question.

In order to enjoy the household qualification 6 a person must, during the qualifying period, have been "the inhabitant occupier, as owner or tenant," of a dwelling-house.

7

Under this enactment it has been held that a man absent from his dwelling-house on military duty for a short time in the course of the qualifying period thereby loses the qualification, even though his family continue, during his absence, to reside at the dwelling-house in question. 8 (1) *Barlow v. Smith* (1892), 1 sect. 2, ante. p. 5.

*Fox*, 293. (7) Representation of the People (2) Reg. v. Exeter (mayor) (*JVes-* Act, 1867 (30 31 Vict. c. 102), comb's Case) (1868), L. R. 4 Q. B. s. 3.

110; 19 L. T. 397. (8) *Ford v. Barnes*, *Ford v. Elms-* (3) Municipal Corporations Act, 1885, 16 Q. B. D. 254; 55 1835 (5 6 Will. IV. c. 76), s. 9, L. J. Q. B. 24; 53 L. T. 675; 50 now repealed. J. P. 37; Colt. 396; *Spittall v.*

(Reg. v. *Boycott* (1866), 14 *Brook* (1886), 18 Q. B. D. 426; 56

L. T. 599. L. J. Q. B. 48 j 56 L. T. 364; 35 (5) Reg. v. Exeter mayor) (*Dips W. R.* 520; *I Fox*, 22; *Donogkue tale's case*) (1868), L. R. 4 Q. B. v. *Brook* (1887), 57 L. J. Q. B. 114; 19 L. T. 432. 122; 58 L. T. 411; *I Fox*, 100.

(6) As to this see the note to 56 57 Vict. Under the same enactment it was held that the absence of c- 73. s- 3 n- undergraduates of Oxford and Cambridge from their rooms during the vacations, which comprise nearly six months in the year, and during which such undergraduates are not permitted to reside in their rooms, constituted a break in their residence, preventing their being qualified as inhabitant householders in respect of their rooms. 1

Residence within three miles." â The distance of three miles mentioned in sub-sect. (1) is, under the Interpretation Act, 1889, 2 to be measured as the crow flies.

Disqualifications for the office. â Provisions disqualifying certain persons for the office of parish councillor or chairman of a parish council are contained in sect. 46.

Term of office. â By sect. 78 (3) the first parish councillors for a parish will hold office for rather more than a year, retiring on the 15th April, 1896.

Election and coming into office of parish councillors, Â c. â Provisions as to the dates on which the first elections of parish councillors are to be held, and on which the first parish councillors elected are to come into office, are contained in sect. 84;

and by sect. 80 (1) the county councils are empowered to remove difficulties arising in connection with the first election of parish councillors.

As to the election of parish councillors generally, see sect. 48 and the note to that section. As to acceptance of office by a parish councillor, see the first schedule, part ii. (1. As to casual vacancies on a parish council and resignation of office by a parish councillor, see sect. 47.

Meetings of parish council. â By sect. 78 (2) the first meeting of a parish council is to be convened by the chairman of the parish meeting at which the first parish councillors are nominated, or, in his default, by the clerk of the guardians; and by sect. 80 (1) the county council are empowered to remove any difficulty that may arise with respect to the first meeting of a parish council. As to the convening of parish meetings generally, see the first schedule, part ii. By sect. 4, schoolrooms and rooms maintainable out of local rates are in certain cases made available for meetings of a parish council; and by sect. 61 a meeting of a parish council is not, except where no other suitable room is available, either free of charge or at a reasonable cost, to be held in premises licensed for the sale of intoxicating liquor.

Corporate character of the parish council. â A few observations as to the legal position of a corporation established by statute for the purpose of local government may not be out of place at this point.

(1) *Tanner v. Carter, Banks v. Banks v. Mansell*, 55 L. J. Q. B.

*Mansell* (1885), 16 Q. B. D. 231; 27.

53 L. T. 663; 34 W. R. 41; *Colt*. (2) 52 53 Vict. c. 63, s. 34, 435 S. C. C. nom. *Tannery. Castor*, set out in the note to sect. 75.

Broadly speaking, a corporation has, for the purposes for 56 57 Vict. which it is established, the rights and duties of a natural person c. 73. s- 3. n-subject to the necessary limitations due to its not being an actual person, and to any limitations that may be imposed on it by statute. It may sue and be sued, may enter into agreements and possess property, is responsible civilly for injuries it does, and is even liable to criminal proceedings for acts of a technically criminal character of which it is guilty.

The powers of a corporation established for definite purposes are, however, limited to those purposes. Not only is such a corporation not justified in embarking upon transactions which are foreign to the purposes for which it was established; but such transactions are regarded as being beyond the powers, or as it is usually expressed, "ultra vires" of the corporation, and the corporation is regarded as being in a sense incapable of performing any act connected with such transactions. For example, a contract entered into by a corporation beyond the scope of the purposes â for which it is established is void and unenforceable either by or against the corporation. 1

It follows, from the principle above stated, that the power of a parish council to expend their funds is limited to purposes expressly or implicitly authorized by statute, and that the expenditure of such funds for any other purposes is unlawful. It may be well to add that, if a parish council should expend their funds for any unlawful or unauthorized purpose, it will be the duty of the auditor, by whom their accounts are audited under sect. 58, post, to disallow the expenditure, and to take steps to compel persons responsible for such expenditure to refund the money out of their own pockets.



The duty of such a body as a parish council to apply their funds to such purposes only as are authorized by statute may be put upon another ground. Such a body is, to a considerable extent, in the nature of a body of trustees administering funds held upon what is technically a charitable trust; and any diversion of their funds to purposes other than such as are authorized by statute, is therefore a breach of trust. A local authority may accordingly be restrained from misapplying their funds by the Chancery Division of the High Court exercising the jurisdiction over charitable trusts formerly vested in the Court of Chancery. 2

Contracts with a parish council. A corporation has almost invariably a common seal: indeed the possession of a common seal has generally been regarded as one of the distinguishing features of a corporation. And, though there are extensive (1) See *Ashbury Railway Car Seward Brice's treatise on the riage, c, Co. v. Riche* (1875), subject.

L. R. 7 H. L. 653; 44 L. J. Ex. (2) A. G. v. Brown (1818), 185; 33 L. T. 450; 24 W. R. 794. I Swanst. 265; A. G. v. Eastlake

For full information with regard to (1853), II Hare, 205; A. G. v. the difficult doctrine of *ultra vires*, Brecon (mayor, c), 10 Ch. D. reference may be made to Mr. 204; 48 L. J. Ch. 153; 40 L. T. 52.

56 57 Vict, exceptions, the general rule of the law is that a corporation c 73 s Â 3) n- cannot bind itself by contract except under its common seal.

The intention of sub-sect. (9) appears to be that signature by the chairman and two members of a parish council shall be necessary and sufficient to give validity to any document that, in the case of an ordinary corporation, would require sealing with the common seal, except where the document would require sealing if it were executed by a private person, in which case the document is to be executed under the hands and seals of the chairman and two members.

In order to ascertain in what cases a parish council will be bound by a contract entered into without the formalities required by sub-sect. (9), it becomes therefore necessary to inquire what exceptions there are, in the case of statutory non-commercial corporations such as local authorities, from the rule requiring the contracts of a corporation to be under seal.

Formerly the only recognized exception from the general rule was in the case of contracts relating to small matters which from their frequent occurrence, or for some other reason, could not practicably be formally made; the principle of the exception being "convenience amounting almost to' necessity." 1

Latterly the exception, in the case of commercial corporations, has been so extended as almost to swallow up the rule. But, as to the exceptions in the case of non-commercial corporations, the recent cases are hardly to be reconciled with each other. 2 It has been suggested that they support the following exceptions: (1) where the contract is necessary and incidental to the purposes for which the corporation was created, and (2) where the contract has been executed by the other party, and the corporation has received the benefit of it.

Neither of these exceptions can however be regarded as fully established. In all the cases where a contract not under seal has been held binding on a non-commercial corporation the contract appears to have fulfilled both conditions; that is to say to



have been executed so that the corporation has had the benefit of it, and to have been necessary and incidental to the purposes for which the corporation was created. 3 (1) *Church v. Imperial Gas, c.* (3) *Sanders v. St. Neots (guar-Co.* (1838), 6 A. E. 846, at dians) (1846), 8 Q. B. 810; 15 L. J. p. 861; S. C. 3 N. P. 35; 7 L. J. M. C. 104; 10 Jur. 566, but as to Q. B. 118. See also *Arnold v. this case*, see per Parke, B., in *Smart Poole mayor, c.* (1842), 4 M. v. West Ham guardians), post, p. Gr. 860; 12 L. J. C. P. 97, where 15; *Clarke v. Cuckfield guardians*) the old authorities are collected. (1852), 21 L. J. Q. B. 349; 16 (2) See per Lord Blackburn, in Jur. 686; *Haigh v. North Bierley Young v. Leamington (mayor, c.) (guardians)* (1858), E. B. E. 873; (1883), 8 App. Cas. 517, at p. 522; 28 L. J. Q. B. 62; 5 Jur. (N. s.) S. C. 52 L. J. Q. B. 713; 49 511; 6 W. R. 679; *Nicholson v. L. T. 1*; 31 W. R. 925; 47 J. P. *Bradfield (guardians)* (1866), L. R. 660. 1 Q. B. 620; 35 L. J. Q. B. 176;

In the cases cited below, 1 contracts not under seal, of which 56 56 Vict, corporations have had the benefit, have been held to be c- 73, s. 3, n. unenforceable against the corporation, expressly on the ground that they were for purposes not incidental or necessary to the purposes for which the corporation was established. The attempts to enforce an executory contract not under seal against a non-commercial corporation appear hitherto to have failed. 2

Against the cases cited in notes (3), p. 14 and (1), *infra*, must be set certain cases in which executed contracts, of which the corporation had had the benefit, and which appear to have been necessary and incidental to the purposes for which the corporation was created, have been held to be unenforceable. 3 Probably, however, these cases must be regarded as overruled, and the rule may be considered established that a contract which is necessary and incidental to the purposes for which a corporation is established, and of which the corporation has had the benefit, may be enforced against the corporation, though not under seal. 4

It should be mentioned that certain of the " Adoptive Acts," 5 require contracts entered into in pursuance of their provisions to be made with special formalities. The validity of an informal contract entered into by a parish council acting in the execution of such an Act, will of course depend on the terms of the Act in question. 6

Where a corporation has executed its part of a contract not under its seal, it may enforce the contract against the other party. 7

It should be observed that a local authority may lawfully 14 L. T. 830; 14 W. R. 731; see on this subject to *Hunt v. Wimble-* also *Scott v. Clifton school board*) don local board) (1878), 4 C. P. D.

(1884), 14 Q. B. D. 500; 52 L. T. 48; 48 L. J. C. P. 207; 40 L. T. 105; 33 W. R. 368; C. E. 115; 27 W. R. 123, and *Young v.*

435, where, however, the decision *Leamington mayor, c.*), ante, partly turned on special statutory p.14.

provisions. The last cited case (5) As to these Acts, see sect. 7, was afterwards affirmed in the and the note to that section. Court of Appeal but the decision (6) See the cases cited in note (4).

is not reported. (7) *Fishmongers' Co. v. Robertson* (1) *Paine v. Strand guardians* (1843), 5 M. Gr. 131; 12 L. J. (1846), 8Q. B. 326; 15L. J. M. C. C. P. 185. An obiter dictum in 89; 10 Jur. 308; *Phelps v. Upton* this case to the effect that if a

Snodbury (highway board) (1887), corporation should take proceedings upon an informal contract, (2) *Dyde v. St. Pancras* (guaranties that would amount to an admission of liability) (1872), 27 L. T. 342; *Austin v. Bethnal Green Guardians* (1874), binding on them, and have the L. R. 9 C. P. 91; 43 L. J. C. P. effect of rendering the contract so void, 29 L. T. 807; 22 W. R. 406. binding, has, it should be mentioned, been overruled: *Kidderminster City Council v. Hardwick* (1849), 3 Ex. 283; 18 L. J. Mayor, &c. v. Hardwick Ex. 282; *Smart v. West Ham* (1873) L. R. 9 Ex. 13; 43 L. J. (guardians) (1855), 10 Ex. 867. Ex. 9.

(4) Reference may also be made to 56 & 57 Vict., which apply their funds towards performing their part of a contract c. 73, s. 3, n. which is otherwise unobjectionable, though it may for want of seal be unenforceable. 1

By the first schedule, part iii. (4), an instrument purporting to be executed in the manner prescribed by sub-sect. (9) is, until the contrary is proved, to be deemed to have been duly so executed.

Liability of parish council in respect of wrongs. — It is well established that corporations, including corporate local authorities, are liable in almost all respects like private persons for injuries they wrongfully cause to others, and that their funds are applicable to the discharge of such liabilities. 2

Where an Act of Parliament confers powers on a public body it is sometimes difficult to determine whether the Act is intended to enable the powers to be exercised notwithstanding that their exercise may be productive of such injury to some person as would, but for the Act, be actionable; or whether on the other hand the Act is merely intended to authorize the powers to be exercised so far as may be done without causing such injury.

In the former case no action will lie in respect of injury caused by the exercise of the powers with due skill and care. "No action will lie for doing that which the legislature has authorized, if it be done without negligence, although it does cause damage to anyone." 3 In accordance with this principle it has for example been held that no action lies in respect of injury caused by sparks from locomotives running on a railway worked under statutory powers. 4

In the latter case the public body are liable as if they were private persons acting without statutory powers. Thus it was held that the managers of the metropolitan asylum district, though they had power to erect a small-pox hospital, might be restrained by injunction from erecting a hospital in such a situation as to cause injury to a neighbouring land owner. 5

The question of the liability of a public body to proceedings of a criminal nature in respect of public mischief caused by the exercise of their powers depends on exactly the same principle (1) *Reg. v. Breston* (1860), 16 Q. B. Co. (1860), 5 H. N. 679; 29 32; *Reg. v. Norwich (Mayor)* (1882), L. J. Ex. 247; 6 Jur. (n. s.) 899; 30 W. R. 752; and see *Bourne* 2 L. T. 394; 8 W. R. 549; see *Mouth (Commissioners) v. Watts* also *Hammersmith and City Rly.* (1884), 14 Q. B. D. 87; 54 L. J. Co. v. Brand (1869), L. R. 4 H. L. Q. B. 93; 51 L. T. 823 j 33 W. R. 171; 38 L. J. Q. B. 265; 21 L. T. 280; 49 J. P. 102. 238; 18 W. R. 12; *London (2) Mersey Docks and Harbour Brighton and South Coast Rly. Co. Board Trustees v. Gibbs* (1866), v. Truman (1885), 11 App. Cas. L.

R. 1 H. L. 93; 35 L. J. Ex. 45; 55 L. J. Ch. 354; 54 L. T. 225; 12 Jur. (N. s.) 571; 14 L. T. 250; 50 J. P. 388.

677; 14 W. R. 872. (5) Metropolitan Asylum District (3) Per Lord Blackburn in *Geddis (managers) v. Bill* (1881), 6 App. v. *Bann Reservoir (proprietors)* Cas. 193; 50 L. J. Q. B. 353; 44 (1878), 3 App. Cas. 430. at p. 455. L. T. 653; 45 J. P. 664.

(4) *Vaughan v. Taff Vale Rly.*

as the question of their liability to an action in respect of 56 57 Vict, private injuries caused thereby. 1 c. 73, s. 3, n.

Whether a local authority are liable in respect of injuries resulting to any person from a mere omission to discharge their duties depends upon the terms and intention of the particular enactments imposing the duty. 2

Legal proceedings against parish council. â A parish council will be entitled to the benefit of the stringent conditions imposed on persons taking legal proceedings against public authorities by the Public Authorities Protection Act, 1893. 3

Sect. 4. â (1.) In any rural parish in which there is no Use of suitable public room vested in the parish council or in schoolroom, the chairman of a parish meeting and the overseers which can be used free of charge for the purposes in this section mentioned, the parochial electors and the parish council shall be entitled to use, free of charge, at all reasonable times, and after reasonable notice, for the purpose ofâ (a) the parish meeting or any meeting of the parish council; or (b) any inquiry for parochial purposes by the Local

Government Board or any other Government department or local authority; or (c) holding meetings convened by the chairman of the parish meeting or by the parish council, or if as to allotments in the manner prescribed by the 53 54 Vict.

Allotments Act, 1890, or otherwise as the Local c. 65.

Government Board may by rule prescribe, to discuss any question relating to allotments, under the Allotments Acts, 1887 and 1890, or under this Act; or (d) the candidature of any person for the district council or the parish council; or (e) any committee or officer appointed, either by the parish meeting or council or by a county or district council, to administer public funds within or for the purposes of the parish any suitable room in the schoolhouse of any public elementary school receiving a grant out of moneys provided by Parliament, and any suitable room the expense of maintaining which is payable out of any local rate: Provided that this enactment shall not authorise the (1) See, in addition to the cases 441; 46 L. J. Ex. 775; 36 L. T. above cited, *Rex v. Pease* (1832), 761; 25 W. R. 794.

4 B. Ad. 30; 1 N. M. 690. (3) 56 57 Vict. 61, set out in (2) *Atkinson v. Newcastle, c., the Appendix. Waterworks Co.* (1877), 2 Ex. D.

Part 56 57 Vict. c. 73, s. 4.

use of any room used as part of a private dwelling-house, nor authorise any interference with the school hours of an elementary day or evening school, nor, in the case of a room used for the administration of justice or police, with the hours during which it is used for these purposes.

(2.) If, by reason of the use of the room for any of the said purposes, any expense is incurred by the persons having control over the room, or any damage is done to the room or to the building of which the room is part or its appurtenances, or the



furniture of the room or the apparatus for instruction, the expense or damage shall be defrayed as part of the expenses of the parish meeting or parish council or inquiry as the case may be; but when the meeting is called for the purpose of the candidature of any person, such expense or damage shall be reimbursed to the parish meeting or the parish council by the persons by whom or on whose behalf the meeting is convened.

(3.) If any question arises under this section as to what is reasonable or suitable, it may be determined, in the case of a schoolhouse by the Education Department, in the case of a room used for the administration of justice or police by a Secretary of State, and in any other case by the Local Government Board.

Note. Allotments. â The provisions of the present Act as to allotments are contained in sects. 6, 9, and 10. The Allotments Acts, 1887 1 and 1890, 2 will be found in the Appendix. Sect. 5 of the latter Act contains provisions as to the use of a schoolroom for the purpose of inquiries, c, under that Act, and of public meetings to discuss questions relating to allotments.

Public elementary school. â The expression "elementary school" is defined in sect. 75 (2).

Parish council to appoint overseers.

Powers and Duties of Parish Councils and Parish Meetings.

Sect. 5.â (1.) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer, for every rural parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the (1) 50 51 Vict. c. 48.

(2) 53 54 Vict. c. 65.

parish, and shall in either case forthwith give written 56 57 Vict, notice thereof in the prescribed form to the board of c- 73. s. 5-guardians.

(2.) As from the appointed dayâ (a.) the churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and (b.) references in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, and (c.) the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

Note. Transfer of power and duties. â The powers and duties of the parish council, under sub-sect. (1), are, it will be observed, transferred to them partly from the vestry and partly from the justices. Provisions as to the construction of enactments relating to powers and duties so transferred are contained in sect. 52 (5).

Appointment of overseers. â With regard to the appointment of overseers in a rural parish not having a separate parish council, see sect. 19. As to the appointment in a parish in a borough or other urban district, or in London, see sect. 33.



By the first schedule, part ii. (3), the first business at the annual meeting of a parish council is to be the election of a chairman and the appointment of the overseers.

Sect. 50 provides that if due notice of the appointment of overseers is not received by the guardians within three weeks after the 15th April, or after the occurrence of a vacancy in the office of overseer, as the case may be, the guardians are to make the appointment or fill the vacancy. The expression "prescribed" means, under sect. 75 (2), prescribed by the Local Government Board.

Hitherto the appointment of overseers has in general been made by the justices under the authority either of the Poor Relief Act, 1601, 1 which enacts that "the churchwardens of (1) 43 Eliz. c. 2, s. 1.

56 57 Vict, every parish, and four three or two substantial householders c. 73 s-5i n- there. to be nominated yearly. under the hand and seal of two or more justices of the peace. shall be called overseers of the poor of the same parish," or of the Poor Relief Act, 1662, 1 which provides for the yearly appointment in places to which that Act applies 2 of two or more overseers of the poor " according to the rules and directions " in the Poor Relief Act, 1601, above mentioned.

It will be observed that under the earlier of these enactments the whole body of overseers consists of the churchwardens as ex officio overseers and of from two to four appointed overseers. The expression " overseer " is sometimes used as applying to the appointed overseers only, sometimes as including churchwardens where they act as overseers, sometimes as including also assistant overseers and other parish officers discharging functions of overseers, and sometimes as including also persons discharging the functions of overseers under local Acts.

Number of overseers â Under the above-mentioned enactments the appointment of one overseer only, 3 or of more than four overseers, 4 was bad. Now, however, under certain statutes referred to below, one overseer only may in some cases be appointed.

Qualification for the office. â The overseers are by the Poor Relief Act, 1601, 5 required to be "substantial householders" in the parish.

In order to be a householder in a parish it is necessary that a person should occupy a house there independently; and where a servant lives in premises belonging to his master without payment, as part remuneration for his services, the question whether he is a householder within the meaning of the Act depends upon whether the servant's use of the premises is subservient and necessary to the service or not; if it is, the premises remain in the occupation of the master, and the servant is not a householder. 6 A person occupying a house in a parish is a householder there, although resident in another parish. 7 A woman may be appointed overseer. 8 The provision that the overseers are to be substantial householders must be read relatively; the appointment of poor persons is not improper where there are no better persons to be found. 9

By the Poor Relief Act, 1819, 10 a person who is rated to the (1) 14 Car. II., c. 12, ss. 21, 22. (6) Reg. v. Spurrell (1865), L. R.

(2) See further the note to s. 36, 1 Q. B. 72; 35 L. J. M. C. 74; post. 12 Jur. (n. s.) 208; 13 L. T. 364; (3) Rex v. Clifton inhabitants' 14 W. R. 81.

(1802), 2 East, 168; Reg. v. Cousins (7) Rex v. Poynder (1823), 2 (1864), 4 B. S. 849; 33 L. J. D. R. 258; 1 B. C. 178. M. C. 87; 10 Jur. (n. s.) 722; 9 (8) Rex v. Stubbs (1788), 2 T. R.

L. T. 686; 12 W. R. 374. 395.

(4) *Rex v. Loxdale* (1758), 1 (9) lb.

Burr. 445. (10) 59 Geo. III. c. 12, s. 6.

(5) 43 Eliz. c. 2, s. 1.

poor rate of the parish, and who is a householder resident 56 57 Vict., within two miles from the church or chapel of the parish, or c. 73, s. 5, n. where there is no church or chapel, within one mile from the boundary of the parish, may, with his consent, be appointed overseer though not a householder within the parish. And the Poor Law Amendment Act, 1866, 1 authorises the appointment of one overseer only where two cannot be conveniently appointed from the inhabitant householders of the parish, and further authorises " where there is no such householder liable or fit to be appointed," the appointment of some inhabitant householder of an adjoining parish, willing to serve, either with or without an annual salary to be paid out of the poor rate of the parish for which the appointment is made.

Disqualifications for the office. â The following persons are disqualified by statute for the office of overseer: Persons at the time of a proposed appointment in any parish " engaged or directly or indirectly concerned in any contract for the supply of goods, wares, materials, or provisions for the workhouse, or for the relief of the poor in such parish or in the union comprising such parish." 2; a master of a workhouse or a relieving officer; 3 an assistant overseer; 4 persons who have been convicted of felony, fraud, or perjury; 5 persons who have been summarily convicted under the Poor Law Amendment Act, 1834, of purloining, embezzling, or wilfully wasting or misapplying property belonging to a parish or union; 6 persons found guilty of certain offences in connection with parliamentary and other elections, including elections under the present Act; 7 and persons adjudged bankrupt. 8 The disqualification of a bankrupt ceases, however, if and when the adjudication is annulled, or the bankrupt obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part; or, if he is discharged without such a certificate, after the lapse of five years from the date of his discharge. 9

Compulsory service as overseer. â An inhabitant householder in a parish not disqualified, is bound to serve as overseer if appointed, and a refusal on his part so to serve is an indictable misdemeanour. 10

Many statutes, however, contain provisions exempting various (1) 29 30 Vict. c. 113, s. 11. 64; Municipal Elections (Corrupt (2) Poor Law Amendment Act, and Illegal Practices) Act, 1884 1849 (12 13 Vict. c. 103), s. 6. (48 Vict. c. 70), ss. 2, 23, 28 (4); (3) Poor Law Amendment Act, Local Government Act, 1888 (51 1850 (13 14 Vict. c. 101), s. 6. 52 Vict. c. 41), s. 75: and see (4) Poor Law Amendment Act, s. 48 of the present Act.

1866 (29 30 Vict. c. 113), s. 10. (8) Bankruptcy Act, 1883 (46 (5) Poor Law Amendment Act, 47 Vict. c. 52), s. 32.

1834 (4 5 Will. IV. c. 76), s. 48. (9) lb.; Bankruptcy Act, 1890 (6) lb. s. 97. (53 54 Vict. c. 71), s. 9.

(7) Corrupt and Illegal Practices (10) *Rex v. Poynder* (1823) 2 Prevention Act, 1883 (46 47 D. R. 258; 1 B. C. 178. Vict. e. 51), ss. 6 (3), 38 (5), 43, 56 57 Vict, persons from liability to serve as overseers against their wish. c- 73 s- 5 n- Such

provisions exist in favour of apothecaries; 1 the clergy; 2 commissioners and officers of customs; 3 dentists registered under the Dentists Act, 1878; 4 factory inspectors; 5 income tax commissioners certified under the Income Tax Act, 1842; 6 inland revenue commissioners and persons in their employ; 7 medical practitioners registered under the Medical Act, 1858; 8 ministers of dissenting congregations; 9 persons in the army reserve, 10 the militia, 11 the royal naval volunteers, 12 or the royal naval coast volunteers; 13 post office officials; 14 registrars of births and deaths, or of marriages; 15 and Roman Catholic priests. 16

Appeal against the appointment-â Under the Poor Relief Act, 1601, 17 and the Poor Relief Act, 1743, 18 a person appointed overseer by justices, or any other person aggrieved by the appointment, may appeal to quarter sessions against the appointment. 19 The appeal is not given by express words but by general words giving an appeal against all acts of justices under the Acts above mentioned. It seems, therefore, that there will be no appeal in the case of an appointment made by a parish council or a parish meeting.

The appointment of an overseer by justices may be removed into the High Court by certiorari and there quashed where it has been illegally made. 20 This remedy also appears to be inapplicable in the case of an appointment made by a parish council or parish meeting.

Appointment of assistant overseers. â As to the appointment of assistant overseers in a rural parish not having a separate parish council, see sect. 19. As to the appointment in a parish in a borough, or other urban district, or in London, see sect. 33.

The appointment of an assistant overseer by the vestry and justices is authorised by the Poor Relief Act, 1819, 21 which enacts that:â " It shall be lawful for the inhabitants of any parish in vestry assembled, to nominate and elect any discreet person or persons to be assistant overseer or overseers of the poor of such parish, and to determine and specify the (2) 1 W. M. c. 18, s. 8. (15) 7 Will. IV. 1 Vict. c. 22, (3) 39 4Â Vict. c. 36, s. 9. s. 18.

(4) 41 42 Vict. c. 33, s. 30. (16) 31 Geo. III. c. 32, s. 9; 31 (5) 41 Vict. c. 16, s. 67. 32 Vict. c. 72, s. 9; 34 35 (6) 5 6 Vict. c. 35, s. 35. Vict. c. 48.

(7) 53 54 vict Â c- 21 s. 8. (17) 43 Eliz. c. 2, s. 5.

(8) 21 22 Vict. c. 90, s. 35. (18) 17 Geo. II. c. 38, s. 4.

(9) 52 Geo. III. c. 155, s. 9. (19) Rex. v. Forrest (1789), 3 (10) 45 46 Vict. c. 48, s. 7. T. R. 38.

(n) 52 Geo. III. c. 38, s. 197: (20) Rex. v. Great Marlow in- 45 46 Vict. c. 49, s. 41. habitants), (1802), 2 East, 244; (12) 22 23 Vict. c. 40, s. 7. Rex. v. Standard Hill (itihabitants), (13) 16 17 Vict. c. 73, s. 8. (1815) 4 M. S. 378.

(14) 7 Will. IV. 1 Vict. c. 33, (21) 59 Geo. III. c. 12, s. 7.

duties to be by sic or them executed and performed, and to fix 56 57 Vict.

such yearly salary for the execution of the said office as shall c. 73, s. 5, n, by such inhabitants in vestry be thought fit; and it shall be lawful for any two of His Majesty's justices of the peace, and they are hereby empowered, by warrant under their hands and seals, to appoint any person or persons who shall be so nominated and elected to be assistant overseer or overseers of the poor, for such purposes, and with such salary,



as shall have been fixed by the inhabitants in vestry; and such salary shall be paid out of the money raised for the relief of the poor, at such times and in such manner as shall have been agreed upon between the inhabitants in vestry and the respective persons so to be appointed; and every person to be so appointed assistant overseer shall be and he is hereby authorised and empowered to execute all such of the duties of the office of overseer of the poor as shall in the warrant for his appointment be expressed, in like manner and as fully, to all intents and purposes, as the same may be executed by any ordinary overseer of the poor; and every person or persons so appointed shall continue to be an assistant overseer of the poor until he or they shall resign such office, or until his or their appointment shall be revoked by the inhabitants of the parish in vestry assembled, and no longer."

Where the warrant of appointment of an assistant overseer did not specify what duties he was to perform, it was held that the appointment was good and that he must be taken to have been appointed to perform all the duties of an overseer. 1

The justices are bound under the above enactment to appoint any person nominated by the vestry. 2

In some parishes the power of appointing an assistant overseer is at present vested in the guardians under an order of the Local Government Board or of their predecessors. 3 And where such an order is in force the powers of the vestry and justices to appoint an assistant overseer are at present in abeyance by virtue of a provision in the Poor Law Amendment Act, 1844.

By sects. 81 (6) and 89 of the present Act, "so much of any enactment as authorises the appointment of assistant overseers by a board of guardians," and also the last-mentioned provisions of the Poor Law Amendment Act, 1844, are repealed as from (1) *Skingley v. Stirridge* (1843), J. P. 296.

11 M. W. 503; 12 L. J. M. C. (3) The power of the Local 122; 7 Jur. 773; *Points v. Attivood* Government Board to make such (1848), 6 C. B. 38; 2 Lutw. Reg. an order appears to be derived from

Ca. 117; 18 L. J. C. P. 19; 13 sect. 61 of the Poor Law Amend-  
Jur. 83. ment Act, 1844 (7 8 Vict. c. 101): (2) Reg. v. *Shepley* (1888), 22 see Reg. v. Poor Law Commissioners Q. B. D. 96; 59 L. T. 696; 37 (1839), 9 A. E. 911; 2 P. D. W. R. 27; 53 J. P. 261; S. C. 323; 8 L. J. M. C. 77; â â nom. Reg. v. *Shipley*, 58 L. J. M. C. *Greene* (1852). 7 Q- B- 793; 21 6; *Underwood v. Jones* (1891), 60 L. J. M. C. 137; 10 Jur. 663.

L. J. M. C. 58; 64 L. T. 144; 55 (4) 7 8 Vict. c. 101, s. 61.

56 57 Vict, the appointed day. 1 After that day, therefore, no further c 73, s. 5, n. appointment of an assistant overseer will be made by guardians. Assistant overseers appointed by guardians and then in office will continue to hold office under sect. 81 (4).

By sect. 62 of Poor Law Amendment Act, 1844, 2 the Local Government Board have power, as successors of the Poor Law Commissioners, to make orders directing a board of guardians to appoint a collector of poor rates for any parish in their union, and it is provided by the same section that the powers of the inhabitants in vestry, or of justices, or of any persons other than the guardians to appoint a collector for any such parish shall cease. The latter part of the section is somewhat obscurely

expressed, seeing that there is no enactment under which a vestry or justices have power to appoint a collector of poor rates as such; it seems, however, to mean that in a parish where a collector of poor rates is appointed by the guardians, the collection of poor rates must be excluded from the duties of any assistant overseer appointed by the vestry, or, under the present Act, by a parish council or meeting or other body.

Disqualifications for the office of assistant overseer. â Section 10 of the Poor Law Amendment Act, 1866, 3 which disqualifies an assistant overseer for the office of overseer likewise disqualifies an overseer for the office of assistant overseer. The remaining enactments above-mentioned disqualifying certain persons for the office of overseer, with the exception of those relating to bankrupts, apply also to the office of assistant overseer, 4 but the Local Government Board may authorise a relieving officer to hold the office. 5

Tenure of the office, câ The Poor Relief Act, 1819, 6 enables the vestry to require an assistant overseer appointed under that Act to give security for the faithful execution of his office by bond made to the churchwardens and overseers. The Poor Law Amendment Act, 1844, 7 requires an assistant overseer appointed under the Act of 1819 to give security to the guardians for the discharge of his duty. It is not the practice for an assistant overseer to give security under both enactments.

An assistant overseer appointed under the Poor Relief Act, 1819, holds office during the pleasure of the vestry and will in future in a rural parish hold office during the pleasure of a parish council under the present section, or of the parish (1) As to the appointed day see overseer; see s. 21 of the same Act, sect. 84 (4). and the Poor Law Amendment (2) 7 8 Vict. 101, s. 62. Act, 1834 (4 5 Will. IV. c. 76), (3) 29 30 Vict. c. 113, s. 10. s. 109.

(4) The Poor Law Amendment (5) Poor Law Amendment Act, Act, 1849 (12 13 Vict. c. 103), 1850 (13 14 Vict. c. 101), s. 6, refers in terms to overseers s. 6.

only, but the expression overseer (6) 59 Geo. III. c. 12, s. 7.

would seem to include an assistant (7) 7 8 Vict. c. 101, s. 61.

meeting under sect. 10, post, as the case may be. He is liable 56 57 Vict. to dismissal by the Local Government Board under the Poor c 73, s. 5, n. Law Amendment Act, 1834, 1 but the consent of that Board to his dismissal by the vestry, parish council, or parish meeting, as the case may be, is not necessary.

Churchwardens as ex officio overseers. â 'The churchwardens are ex officio overseers under the Poor Relief Act, 1601, 2 only in the case of an ancient ecclesiastical parish for which overseers are appointed under that Act. Thus where an ancient ecclesiastical parish is sub-divided into several poor-law parishes, the churchwardens of the ecclesiastical parish are not ex officio overseers for the poor-law parishes. 3 Nor is a chapelwarden, appointed for a township forming part of an ecclesiastical parish, an ex officio overseer, even though the township be a poor-law parish.

Legal interest in parish property. â The Poor Relief Act, 1819, 5 enabled the churchwardens and overseers of a parish to acquire lands and buildings for certain purposes, 6 and provided that all buildings, lands, and hereditaments acquired by the churchwardens and overseers under that Act should be assured to the churchwardens and overseers of the parish and their successors, and that such churchwardens and overseers and their successors should and might " accept, take, and hold, in the nature

of a body corporate, for and on behalf of the parish, all such buildings, lands, and hereditaments, and also other buildings, lands, and hereditaments belonging to such parish." 7

This enactment has not the effect of constituting the churchwardens and overseers a corporation to all intents and purposes so as to invest them with all the common law attributes of a corporation; it merely places them in the position of a corporation for the specific purposes mentioned. 8 It has the effect of vesting freehold and leasehold lands held for the general benefit of the parish, that is for purposes to which the poor rate or the church rate are applicable, in the churchwardens and overseers, where the trustees, if any, of such land cannot be found; and it has this effect in the case of land granted to the parish before the passing of the Act. 9 (1) 4 5 Will. IV. c. 76. s. 48. Will. IV. c. 69), s. 4.

(2) 43 Eliz. c. 2, s. 1. (7) 59 Geo. III. c. 12, s. 17.

(3) Rex v. Nantwich i? inhabitants) (8) Smith v. Adkins (1841), 8 (1S12), 16 East. 228. â M. W. 362; 1 D. N. S. 129; (4) Rex v. Yorkshire justices) Gouldsworth v. Knights (1843), 11 (1837) 6 A. E. 863 M. W. 337.

(5) 59 Geo. III. c. 12. (9) Doe d. Jackson v. Bitty (6) lb. ss. 8, 10, 12. The powers (1830), 10 B. C. 885; 5 Man. of the churchwardens and overseers R. 706; Doe d. Higgs v. Terry for the acquisition of land under (1835), 4 A. E. 274; 5 N. M. these sections have been transferred 556; 1 Har. W. 547; Doe d. to the guardians, by the Poor Law Hobbs v. Cockell (1836), 4 A. E. Amendment Act, 1834 (4 5 Will. 478; S. C. nom. Doe d. Higgs v. IV. c. 76), s. 21, and the Union and Cockell, 6 N. M. 179; 5 L. J. Parish l'roperty Act, 1835 (5 6 M- c- 8l 'â Alderman v. Neate

The Local Government Act, 1894.

Part 56 57 Vict, c 73. s. 5Â n-

Transfer of certain powers of vestry and other authorities to parish council.

On the other hand it does not apply to copyhold land, 1 nor to land held upon special trusts, such as a trust for the apprenticing of poor boys or the distribution of loaves of bread,-2 nor apparently to land held upon trust for the parish by known trustees. 3

The Act apparently applies to the overseers in townships, c, where the churchwardens are not ex officio overseers, but the point does not seem to have been decided.

4

Various modern Acts authorise the churchwardens and overseers to acquire and hold property for different purposes. 5

Sub-sect. (2, c) of the present section, it will be observed, relates only to the legal interest in parish property. Any active powers as to the management of the property thereby transferred to the parish council that may be possessed by the overseers, or churchwardens and overseers, are transferred to the parish council by sect. 6 (1, c, hi.).

As to the legal interest in parish property in a parish not having a separate parish council, see sect. 19.

By sect. 70 a summary method is provided of determining any question that may arise as to whether any property is or is not vested in the parish council.

Affairs of the Church. Ecclesiastical charity. â These expressions are defined in sect. 75 (2),



Sect. 6.â (1.) Upon the parish council of a rural parish coming into office, there shall be transferred to that council:â (a.) The powers, duties, and liabilities of the vestry of the parish exceptâ (i.) so far as relates to the affairs of the church or to ecclesiastical charities; and (ii.) any power, duty, or liability transferred by this Act from the vestry to any other authority: (1839), 4 M. W. 704; *St. Nicholas, Deptford (Churchwardens, c.) v. Sketchley* (1847), 8 Q. B. 394; 17 L. J. M. C. 17; 12 Jur. 38; *Ex parte Nicholls, Re Hackney Charities* (1864), 34 L. J. Ch. 169; 10 Jur. (N. s.) 941; 11 L. T. 35; 12 W. R. 1129, reversed in the Court of Appeal on grounds not affecting the construction of the enactment in question, 4 De G. J. S. 588; 34 L. J. Ch. 176; 11 Jur. (n. s.) 126; 11 L. T. 758; 13 W. R. 398; see also *Haigh v. West* (1893), L. R. 1893 2 Q. B. 19; 62 L. J. Q. B. 532; 69 L. T. 165; 57 J. P.

358.

(1) *A. G. v. Leurin* (1837), 8 Sim. 366; *Re Paddington charities* (1837), 8 Sim. 629; *Doe d. Bailey v. Foster* (1846), 3 C. B. 215.

(2) *A. G. v. Lewin, ubi sup.*; *Allason v. Stark* (1838), 1 P. D. 183; 9 A. E. 255; *Ex parte Nicholls, Re Hackney Charities, ubi sup.*

(3) *St. Nicholas, Deptford (churchwardens, c.) v. Sketchley, ubi sup.*, expressly overruling on this point *Rumball v. Munt* (1846), 8 Q. B. 382; 15 L. J. Q. B. 180; 10 Jur. 539, and also impliedly overruling *Ex parte Annesley* (1836), 2 Y. C. Ex. 350, and *Doed. Edney v. Billett* (1845), 7 Q. B. 976; 14 L. J. Q. B. 343; 9 J. ur- 662.

(4) 59 Geo. III. c. 12, s. 35.

(5) See, e. g., the provisions of the Inclosure Acts referred to in the note to the next section.

(.) The powers, duties, and liabilities of the church- 56 57 Vict, wardens of the parish, except so far as they c- 73. s- 6-relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855: Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, pro-18 19 Vict. vided, in order to obtain the repayment of such c. 128. expenses out of the poor rate, (e.) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect toâ (i.) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate; and (ii.) the provision of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto; and (iii.) the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them; (d.) The powers exercisable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property. (2.) A parish council shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive

buildings as is conferred on inhabitant householders by the Housing of the Working  
53 54 Vict. Classes Act, 1890, but without prejudice to the powers of c. 70. such  
householders.

(3.) A parish council shall have the same power of 56 57 Vict. making a repre-  
sentation with respect to allotments, and c. 73, s. 6. of a ppiyi n g f or the election  
of allotment managers, as is 50 51 Vict. conferred on parliamentary electors by the  
Allotments c. 48. Act, 1887, or the Allotments Act, 1890, but without 53 54 ict '   
prejudice to the powers of those electors.

(4.) Where any Act constitutes any persons wardens for allotments, or authorises  
or requires the appointment or election of any wardens committee or managers for  
the purpose of allotments, then, after a parish council for the parish interested in such  
allotments comes into office, the powers and duties of the wardens, committee, or  
managers shall be exercised and performed by the parish council, and it shall not  
be necessary to make the said appointment or to hold the said election, and for the  
purpose of 55 56 Vict. section sixteen of the Small Holdings Act, 1892, two c 31.  
members of the parish council shall be substituted for allotment managers or persons  
appointed as allotment managers.

Note. Transfer of powers, duties, and liabilities. â Definitions of the several terms  
" powers," " duties," and " liabilities," and of the expression " powers, duties, and  
liabilities," contained in the Local Government Act, 1888, 1 are made applicable to  
the interpretation of the present Act by sect. 75 (1) and are set out in the note to that  
section.

Sect. 67 provides for the manner in which, where powers and duties are transferred  
from one authority to another, property, debts and liabilities of the former authority  
connected with such powers and duties shall also be transferred. Provisions as to  
the construction of enactments relating to functions transferred from the vestry or  
overseers, or churchwardens and overseers, to a parish council or parish meeting  
are contained in sect. 52 (5). By sect. 70 provision is made for the summary  
determination of any question as to whether any functions are or are not transferred by  
or under the Act to any parish council. Sect. 68 affords means of effecting adjustments  
rendered necessary by the transfer of functions or otherwise for the purposes of the  
Act. Sects. 85-88 contain savings for pending legal proceedings, existing debts,  
securities, contracts, bye-laws, and the like. And by sect. 86 (2) it is made the duty  
of every authority, whose powers, duties, and liabilities are transferred by the Act, to  
liquidate so far as practicable before the appointed day all current debts and liabilities  
incurred by such authority.

Exceptions with regard to ecclesiastical charities, c. â It will be observed that from  
among functions transferred to the parish council by the present section, functions  
relating to the (1) 51 52 Vict. c. 41, s. 100.

"affairs of the church " or to " ecclesiastical charities" are 56 57 Vict, excepted.  
These expressions are defined in sect. 75 (2). c. 73, s. 6, n.

Powers, c, of the vestry. â The expression " vestry " is defined by sect. 75 (2),  
as meaning in relation to a parish " the inhabitants of the parish whether in vestry  
assembled or not," and as including " any select vestry either by statute or at common  
law."

In a parish not having a separate parish council the functions of the vestry, with the same exceptions as in the present section are, by sect. 19, subject, if the parish is grouped, to the provisions of the grouping order, transferred to the parish meeting.

Mention is made later in the present note of the functions of vestries as to appeals against valuation lists; as to the provision of vestry-rooms, 2 parochial offices, 3 and fire engines and fire escapes; 4 and as to allotments under the Poor Relief Act, 1819, and Local Inclosure Acts. 5 And mention is made elsewhere in the work of the functions of the vestry as to the appointment of assistant overseers, 6 the adoption and execution of the " Adoptive Acts," 7 highways, 8 charities, 9 and the custody of parish documents. 10

The following functions of the vestry transferred to the parish council by sub-sect. (1, a) may be mentioned at this point:â

Rating of small tenements. â The vestry are given most important powers in relation to the rating of small tenements by the 3rd and 4th sections of the Poor Rate Assessment and Collection Act, 1869, 11 which are as follows:â

Sect. 3. " In case the rateable value of any hereditament does not exceed twenty pounds, if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding twenty-five per cent, on the amount thereof."

Sect. 4. " The vestry of any parish may from time to time (1) See post, pp. 36, 37. (7) See sect. 7, and the note to (2) See post, p. 43. that section.

(3) See post, p. 43. (8) See the note to sect. 13.

(4) See post, p. 44. (9) See sect. 14, and note.

(5) See post, pp. 45-50. (10) See sect. 17, and note.

(6) See the note to sect. 5. (il) 32 33 Vict. c. 41, ss. 3, 4.

56 57 Vict, order that the owners of all rateable hereditaments to which c. 73, s. 6, n. section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order; and thereupon and so long as such order shall be in force the following enactments shall have effect:

"1. The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate:

"2. If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated:



"3. The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect:

Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included."

The power to rate an owner who has given the notice mentioned in sub-section 2 of sect. 4 ceases, as regards any premises, upon such premises rising in value beyond the limit specified in sect. 3, or apparently, if the order of the vestry be rescinded. Whether an agreement under sect. 3 would cease to operate if the rateable value of the premises should rise above the specified limit, is doubtful. 1

Sect. 34, post, it may be mentioned, empowers the Local Government Board in certain cases to transfer the powers of the vestry of a parish in an urban district under the above cited enactments to the district council, or some other representative authority within the district.

Tramways. â The vestry of a rural parish are constituted the " local authority " for their parish by the Tramways Act, 1870. 1 Under that Act the promoters of a tramway must in general, before applying for a provisional order authorising the construction of a tramway in any district, obtain the consent of the local authority of the district, and also of the road authority (1) *Norwood (overseers) v. Salter* 56 J. P. 535. (1892), L. R. 1892, 2 Q. B. 118; (2) 33 34 Vict. c. 78, s. 3, and 61 L. J. M. C. 193; 67 L. T. 376; Schedule A., Part I.

where the road authority are distinct from the local authority, 56 57 Vict.

except where the district is, or forms part of, a highway c. 73, s. 6, n.

district, in which case the consent of the road authority alone is sufficient. 1 In some cases, however, the consent of a local or road authority may be dispensed with by the Board of

Trade. 2

A local authority under the Act may, moreover, themselves, either alone or in concert with some other local authority or authorities, act as promoters of a tramway, apply for a provisional order authorising the construction of a tramway within their district, and after the provisional order has been duly confirmed, construct a tramway accordingly. 3

The local authority have also, in the case of any tramway within their district constructed under the authority of a provisional order or Act of Parliament passed after the Tramways Act, 1870, subject to any special provisions contained in the order or Act, the following powers: 4 â They may, where they consider that the public are deprived of the full benefit of a tramway which has been open for traffic for three years, represent the matter to the Board of Trade with a view to that Board's granting licences to persons other than the promoters to use the tramway. 5 They are empowered to make regulations and bye-laws as to the rate of speed to be observed in travelling upon the tramway; the distances at which carriages using the tramway shall be allowed to follow one after the other; the stopping of carriages using the tramway; and the traffic on the road in which the tramway is laid. 6 And they are given powers enabling them to purchase the tramway and its appurtenances from the promoters, either, after the

tramway has been open for traffic for six months, by agreement; or, after the expiry of a given period after the powers authorising the construction of the tramway have been obtained, and in some instances before the expiry of that period, compulsorily. 7

Where a local authority construct or acquire a tramway under the Act, they may, subject to certain conditions, let the right to use it, or may throw it open to the public and take tolls in respect of its user; but they may not themselves run tramcars on it and charge for their use. 8

Gas and water works. â The vestry of a rural parish are also made the " local authority " for their parish under the Gas and Water Works Facilities Act, 1870. 9 Under that Act the consent of the local authority of a district is in general necessary before a provisional order can be obtained authorising the construction in the district of gas or water works, or works connected therewith; but such consent may be dispensed (1) 33 34 Vict. c. 78, s. 4. (6) lb. s. 46, and see s. 47.

(2) lb. s. 5. (7) lb. ss. 41-44.

(4) See ib. s. 22. (9) 33 34 Vict. c. 70, s. 2, and (5) lb. s. 35, and see ss. 36-40. Schedule A.

56 57 Vict, with, after inquiry, by the Board of Trade. 1 The local authority c. 73, s. 6, n. have no further functions under the Act.

Parish Constables. â Under the Parish Constables Act, 1872 the vestry of any parish not included in a borough may at any time resolve that one or more parish constables shall be appointed for their parish, and may in such resolution fix the amount of salary to be paid out of the poor rate to him or them. A copy of any such resolution is to be delivered to the justices of the petty sessional division comprising the parish, who may appoint a parish constable or constables in accordance therewith. And it is provided that a constable or constables so appointed " shall hold his or their office until he or they shall resign or be dismissed for misconduct or incompetency by the justices of the said division, or the vestry shall determine to discontinue the appointment of a constable at the expiration of not less than six months from the day on which a copy of such resolution shall be delivered to the justices of the said division." The vestry may raise the salary attached to the office of parish constable at any time by a resolution, of which a copy is to be delivered to the justices. 3 And parishes are empowered to unite for the appointment of the same person as parish constable to serve for all such parishes. 4

The same Act further enables the quarter sessions to pass a resolution requiring the appointment of a parish constable or parish constables for any parish within their county in accordance with the provisions " of the law for the appointment of parish constables then in force." 5 Where such a resolution is in force the vestry are required under an Act of 1842, 6 in pursuance of a precept of the justices, annually to make out a list of such number as is named in the precept of men residing in their parish qualified and liable to serve as constables; but the vestry may annex to the list the names of any number of men willing to serve the office of constable, and whom the vestry recommend to be appointed though not possessed of the qualification specified in the Act. 7 From among the persons named in the list, after it has been dealt with in the manner provided by the Act, 8 the parish constables for the year are chosen.

The Parish Constables Act, 1872, 9 provides that, except in the cases above-mentioned, no parish constable shall be appointed.

Expenses of overseers under the Union Assessment Acts. â-Sect. 7 of the Union Assessment Committee Amendment Act, 1864, 10 enacts that:â

"When the overseers of any parish incur any expense in

I. Pavers and Duties of Parish Councils and Meetings. 33 making out any valuation list or supplemental list, or in 56 57 Vict. revising or valuing any of the rateable hereditaments of such c- 7S s. 6, n. parish, under the provisions of the Union Assessment Committee Act, 1862, with the consent of the vestry given by express resolution, after due notice, they may charge such expense, so far as the same may be authorised by the vestry, upon the poor rate; and if no vestry meeting be held, or no decision arrived at on the subject, then to the extent which the assessment committee shall allow: Provided that, as regards the valuation of the property, no expense shall be so charged upon the poor rate unless the consent of such committee to the procuring of such valuation by the overseers shall have been given previously to the same being made."

The consent of the vestry under this enactment may be given after the expense has been incurred. 1

Knackers' Yards. â Under the Knackers' Act, 1786, 2 it devolves upon the vestry of any parish, in which there is a knackers' yard licensed under that Act, to appoint annually an inspector or inspectors to inspect such yard. 3

Remuneration of rate collector in respect of sanitary rates. â Under sect. 230 of the Public Health Act, 1875, 4 the officers ordinarily employed in the collection of the poor rate, if employed to collect a special rate made under that section, are to receive such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

Powers, c, of churchwardens.â The author is not aware of any functions of a civil character vested in the churchwardens apart from the overseers under the general law, except certain functions relating to charities, the powers and duties as to closed churchyards expressly mentioned in sub-sect (1, b), and certain functions as to the convening of vestry meetings and the like.

Closed churchyards.â-The Burial Act, 185 5 s, provides that " in every case in which any order in council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repairs of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the (I) Reg. v. Chorlton-tipon-Mcd ss. 37-39. As to the valuation list lock overseers) (1875), 1 Q- B- D generally, see post, pp. 34, 35.

â 2; 45 L. J. M. C. 33; 33 L. T. (2) 26 Geo. III. c. 71.

526; 24 W. R. 110; 40 J. P. 533; (3) As to the Knackers' Act,

Cf. Reg. v. Cumberlege (1877), 2 1786, see further p. 308.

Q. B. D. 366; 46 L. J. M. C. (4) 3 8 39 Vict. c. 55, s. 230.

214; 36 L. T. 700; 25 W. R. (5) 18 19 Vict. c. 128, s. 18.



605; 41 J. P. 533; and see also As to the Burial Acts, see the note the Union Assessment Committee to sect. 7, post. Act, 1862 (25 26 Vict. c. 103), 56 57 Vict. case may be, out of the rate made for the relief of the poor of c. 73, s. 6, n. the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses."

Under this enactment a closed burial ground, if it is a churchyard, is to be kept in order by the churchwardens, although there may be a burial board for the parish; and the expense of keeping it in order is to be defrayed out of the poor rate of the poor law parish in which it is situate, though it may have served as the burial ground for an ecclesiastical parish comprising other poor law parishes. 1

Powers, c. of overseers. â By sect. â the Local Government Board are empowered to confer on the council of any borough, including a county borough, or other urban district, or the sanitary authority of any district in London, or upon some other representative body in such borough or district, any powers, duties, or liabilities of overseers.

In the remainder of the present note the expression " overseers " is in general used, as is usual in modern statutes, as including, where it is necessary, churchwardens and overseers.

The valuation list. â The valuation list for a parish, is a list prepared under the Union Assessment Acts, 1862 to 1880, 2 and the Acts amending the same, of the rateable hereditaments in the parish, setting out among other things the gross and rateable values of each hereditament. These Acts apply in all unions formed under the Poor Law Amendment Act, 1834, 3 and may be brought into operation, with the necessary modifications, in parishes with separate boards of guardians under that Act, or under local Acts, and in unions under local Acts. Considerable portions of these Acts are, however, repealed as regards the metropolis, where the valuation lists are prepared and dealt with mainly under another group of Acts.

The valuation list for a parish determines the values of the several hereditaments comprised in it for the purposes of the poor rate, except where the rate is made under a local Act, 5 and of certain other rates; and also determines the value of the parish as a whole, for the purpose of computing the contributions to be required from the parish to the common fund of the guardians, 6 and for other like purposes.

The A. cts require the guardians of every union to which they apply to appoint an " assessment committee," annually. 7 They provide for the preparation, under the supervision of the assessment committee, of a valuation list for every parish in (1) Reg. v. Bishop Wearmouth 44 Vict. c. 7).

burial board) (1879), 5 Q. B. D. 67. (3) 4 5 Will. IV. c. 76.

(2) The Union Assessment Com (4) 25 ' . 26 Vict. c. 103, ss. 2, mittee Act, 1862 (25 26 Vict. 45; 43 44 Vict. c. 7.

c. 103); the Union Assessment (5) 25 26 Vict. c. 103, ss. 24,

Committee Amendment Act, 1864 28, 29, 43.

(27 28 Vict. c. 39); and the (6) lb. s. 30.

Union Assessment Act, 1880 (43 (7) lb. ss. 2- 5.

the union, and for the revision of the list from time to time, 56 57 Vict. either by the preparation of an entirely new list for the parish, c- 73. s- 6 n-or by the preparation

of supplemental lists containing some only of the hereditaments in the parish and superseding accordingly only the corresponding part of the previously existing list.

The provisions of the Acts with regard to the preparation of a valuation list, 1 are briefly as follows: The list is prepared by the overseers, or in certain cases by a person appointed for the purpose by the assessment committee. 2 The overseers then deposit the list for public inspection in the place where the rate books of the parish are deposited or kept, give public notice of such deposit, and afterwards transmit the list to the committee. 3 The committee thereupon entertain objections against the list, 4 and if necessary correct it. If the committee make alterations in the list, it is returned to the overseers to be redeposited, after which further objections may be made; 5 and this process may apparently have to be gone through more than once. Ultimately the committee finally approve the list, whereupon it comes "into force," and supersedes the list previously in force, if any, either wholly or in part as the case may be. 6

Objections against the valuation list. â Provisions as to objections against valuation lists are contained both in the Union Assessment Committee Act, 1862, and in the amending Act of 1864. The provisions of the former Act, under which alone overseers are empowered to make objections, relate to objections made before the list comes into force, and are as follows:â

Sect. 18 7 enacts that "Any overseer or overseers of any parish in any union who shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union, or any person who may feel himself aggrieved by any valuation list on the ground of unfairness or incorrectness in the valuation of any hereditaments included therein, or on the ground of the omission of any rateable hereditament from such list, may at any time after the deposit as aforesaid of such list, and before the expiration of twenty-eight days after the notice of the deposit as aforesaid, give to the committee and to the overseers a notice in writing of his objection, specifying the grounds thereof, and where the ground of any objection shall be unfairness or incorrectness in the valuation of any hereditament in respect of which any person, other than the person objecting, is liable to be rated, or the omission of such (1) The process is the same, (4) lb. ss. 18-20. whether the list be the original (5) lb. s. 21.

list, a new list, or a supplemental (6) lb. s. 24, and see the Poor list: see 25 26 Vict. c. 103, s. 27. Law Amendment Act, 1868 (31 (2) 25 26 Vict. c. 103, ss. 14, 32 Vict. 122) s. 30.

16. (7) 25 26 Vict. c. 103, s. 18.

56 57 Vict, hereditament, also give notice in writing of such objection, and c 73, s. 6, n. of the ground thereof, to such other person."

The right to make objections given to persons other than the overseers by this section has been practically superseded by the provisions of the Act of 1864, x under which a ratepayer may object to a valuation list at any time. It is, however, the only section under which a parish council, as successors of the overseers, will have power to object to a valuation list.

The enactments as to the deposit of the list and the notice of such deposit referred to in the section are contained in the preceding section, 2 and have been mentioned.

Sect. 19 3 enacts that "The committee shall hold such meetings as they may think necessary for hearing objections to the valuation lists, and shall, twenty-eight days at

least before holding every meeting for hearing objections to valuation lists, other than meetings by adjournment, cause notice of such meeting to be given to the overseers of the several parishes to which such lists relate, and such overseers shall, on the Sunday next following the receipt of such notice, publish the same in the manner in which notice of a rate allowed by justices is by law required to be given."

The same section empowers the committee to hear and determine the objections, and gives the committee powers of adjournment. It also enables the committee to require notice of objections to be given to third parties; and provides that the committee shall not be required to hear an objection of which due notice has not been given, but that such notice may be waived, in which case the committee may, if they think fit, hear the objection.

Sect. 21 i provides that the committee, if they alter the list, shall cause it to be redeposited, and shall cause notice of such redeposit to be given, " and shall appoint a day, not less than seven days nor more than fourteen days from the redeposit of such valuation list, for the hearing of any objections to the valuation list as so altered."

Appeal against the valuation list. â The right to appeal against the valuation list of a parish is confined to the overseers of the several parishes in the union, or to the parish councils as the successors in this respect of the overseers.

Ratepayers have no right to appeal against the valuation list. If they consider their premises over-assessed in the list they may appeal against a poor rate based on that list, whereupon, if the appeal is successful, the valuation list will be altered in accordance with the result of the appeal. 5

The provisions relating to an appeal against the valuation list are contained in sects. 32-34 of the Union Assessment Committee Act, 1862. 6 (1) 27 28 Vict. c. 39, s. 1. (4) lb. s. 21.

(2) 25 26 Vict. c. 103, s. 17. (5) lb. s. 22.

(3) lb. s. 19. (6) lb. ss. 32-34.

Sect. 32 enacts that " If the overseer or overseers of any 56 57 Vict, parish in any union shall have reason to think that such parish c- 73 s- 6 n-is aggrieved by the valuation list of any parish within such union, whether it be on the ground that the rateable hereditaments comprised in the valuation list of such parish are valued at sums beyond the annual rateable value thereof, or on the ground that the rateable hereditaments comprised in the valuation list of some other parish in such union are valued at sums less than the annual rateable value thereof, it shall be lawful for such overseer or overseers, with the consent of a vestry summoned for the purpose of considering the expediency of giving such consent, to appeal to the quarter sessions for the county or borough in which the greatest number of parishes belonging to the union is situate, or, in case the number of parishes in any two or more such jurisdictions is equal to the quarter sessions for the county or borough having jurisdiction over the parish in which the workhouse of the union is situate, at the sessions to be holden after the expiration of a month after the allowance of and deposit of such valuation list as aforesaid, against such valuation list of the parish which shall appear to be over-valued or under-valued."

The section requires notice of the intention to appeal and of the grounds thereof to be given. If the appeal is against the list of the appellant's parish a fourteen days'



notice previous to the sessions must be given to the guardians of the union. If the appeal is against the list of some other parish a fourteen clear days' notice previous to the first day of sessions must be given to the guardians of the union, and to the overseers of the parish in question.

Apparently, under the Poor Law Amendment Act, 1867, 1 the appeal may now, in spite of the above provisions, be to any quarter sessions having jurisdiction over any part of the union, but the point appears not to have been decided.

Sect. 33 2 enables the quarter sessions, upon the application of the appellant or respondent, to appoint a valuer to value any parish in respect of which an appeal is made and to respite the appeal pending the making of the valuation.

Sect. 34 3 deals with the costs of the appeal. It provides that, in the event of a successful appeal on the ground that the appellants' parish is over-assessed, the Court shall order the appellants' costs to be paid by the guardians out of their common fund, and that in other cases the costs shall be in the discretion of the Court.

Appeal against the poor rate. â An appeal against a poor rate lies either to quarter sessions under the Poor Relief Act, 1743, 4 or to special sessions under the Act of 1836, usually known as the Parochial Assessment Act. 5 (1) 30 31 Vict. c. 106, s. 27. (4) 17 Geo. II. c. 38, s. 4.

(2) 25 26 Vict. c. 103, s. 33. (5) 6 7 Will. IV. c. 96.

56 57 Vict. Under the former Act x any person aggrieved by a poor c. 73, s. 6, n. xz. te, or who shall " have any material objection to any person or persons being put on or left out of such rate. or to the sum charged on any person or persons therein," may appeal against the rate to quarter sessions.

Under the Parochial Assessment Act 2 the justices for every petty sessional division are to hold special sessions four times at least in every year for the purpose of hearing appeals against poor rates. Special sessions are to " hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein," but are not to "inquire into the liability of any hereditaments to be rated, but only into the true value thereof and into the fairness of the amount at which the same shall have been rated."

Certain other Acts, it should be mentioned, contain provisions authorising persons to appeal against poor rates under the above-mentioned enactments in cases that would possibly not have been directly covered by the enactments themselves. 3

Notice of an appeal against the poor rate whether to quarter sessions or special sessions, is required to be given to the overseers; and, though there is no express enactment to that effect, the overseers may appear as respondents on the appeal and expend reasonable sums out of the poor rate for the purpose of defraying the costs they incur in contesting the appeal, but their expenditure may be disallowed if the litigation, or the sum they expend on it, is unreasonable. 4

The Union Assessment Committee Amendment Act, 1864, provides that where the Union Assessment Committee Act, 1862, applies, notice of an appeal against a poor rate, whether to quarter sessions or to special sessions, shall be given to the assessment committee. 5 The same Act empowers the assessment committee, with the consent of the guardians, to appear, in the name of the guardians, as respondents on the appeal, 6 and provides that the costs of the committee in relation to such an appeal, so far

as they are not recovered from the appellants, shall be paid out of the common fund of the union, unless the court before whom the appeal is heard shall direct that such costs, or any part thereof, shall be charged to the parish, the rate of which is appealed against. 7

Where the assessment committee are willing under these (1) 17 Geo. II. c. 38, s. 4. L. J. M. C. 145; 13 Jur. 652; cf.

(2) 6 7 Will. IV. c. 96, s. 6, Reg. v. Fouch (1841), 2 Q. B. 30S; and see s. 7. 1 G. D. 585.

(3) See, e. g., the Poor Rate (5) 27 28 Vict. c. 39, s. 1. Assessment and Collection Act, This section also renders an ob-1869 (32 33 Vict. c. 41), s. 13, jecton against the valuation list which enables owners of premises necessary in most cases before to appeal where they have become appealing against a poor rate.

. liable for rates. (6) lb. s. 2.

(4) See Reg. v. Great Western (7) lb. s. 3. Ry. Co. (1S49), 13 Q- B. 327; provisions to contest an appeal, the overseers rarely take any 56 57 Vict, active part in the matter. c- 73 s- 6 n-

In the case of an appeal to quarter sessions under the Poor Relief Act, 1743, 1 the notice of appeal to be given to the overseers, or under the present Act to the parish council, is a fourteen clear days' notice, previous to the first day of sessions, of the intention to appeal and of the grounds of appeal; 2 but provision is made enabling the appeal to be heard by consent given in open court though such notice has not been given. 3 Moreover the appeal may be entered and respited though the notice above-mentioned has not been given; in which case the notice may be given before the succeeding sessions. 4

In the case of an appeal to special sessions under the Parochial Assessment Act notice must be given to the overseers seven days at least before the day appointed for the special session. 5

An appeal to quarter sessions lies from the decision of special sessions on an appeal against a poor rate. 6

The county rate and the basis of the county rate. â The preparation and revision of the basis of the county rate and the assessment and levy of the county rate are regulated by the County Rates Act, 1852, 7 as amended by subsequent enactments 8 in some minor particulars, and by the Local Government Act, 1888. 9

The basis of the county rate is a valuation of the rateable property in the county showing the total rateable value of the property in each parish or part of a parish within the county. 10 (1) 17 Geo. II. c. 38, s. 4. see also the Summary Jurisdiction (2) 17 Geo. II. c. 38, s. 4; Poor Act, 1879 (42 43 Vict. c. 49), Rate Act, 1801 (41 Geo. III. c. 23), s. 31; the Summary Jurisdiction s. 4; Quarter Sessions Act, 1849 Act, 1884 (47 48 Vict. c. 43), (12 13 Vict. c. 45), s. 1; and s. 4; the Interpretation Act, 1889 see Rex. v. Sussex justices) (1797), (52 53 Vict. c. 63), s. 13 (11); 7 T. R. 107; Reg. v. Suffolk (jus Reg. v. Gloucester (justices), Reg. v. tices) (1848), 5 D. L. 558; Reg. Pontypool (justices) (1892), L. R. v. Lancashire (justices) (1857), 8 1892 1 Q. B. 621; 64 L. J. M. C. E. B. 563; 27 L. J. M. C. 161; 169; 66 L. T. 444; 40 W. R. 436; 4 Jur. (N. s.) 375; 6 W. R. 74; 56 J. P. 437.

Swiftv. Lancashire (justices) (1876), (7) 15 16 Vict. c. 81.

34 L. T. 124. (8) 21 22 Vict. c. 33; the (3) Poor Rate Act, 1801 (41 Revenue Act, 1863 (26 27 Vict-Geo. III. c. 23) s. 5. c. 33), s. 22; the County Rate Act, (4) Poor Relief Act, 1743 (17 1866 (29 30 Vict. c. 78); the Geo. II. c. 38), s. 4; Reg. v. Eyre Poor Law Amendment Act, 1866 (1856), 6 E. B. 992; 26 L. J. (29 30 Vict. c. 113), s. 13.

M. C. 14; 2 Jur. (n. s.) 1207; 5 (9) 51 52 Vict. 41.

W. R. 55; Reg. v. Surrey (justices) (10) 15 16 Vict. c. 81, ss. 2, 6, (1880), 6 Q. B. D. 100; 50 L. J. 31. Perhaps the basis ought also

M. C. 10; 43 L. T. 500; 29 W. R. to show the values of the several 260; 45 J. P. 93. See also Reg. v. parts of a parish in cases where

Yorkshire (justices) (1815), 4M. S. county contributions for any pur- 327; Reg. v. Surrey (justices) (1845), pose are chargeable on part only 15 L. J. M. C. I; 10 Jur. 72. of the parish: see the Local Govern- (5) 6 7 Will. IV. c. 96, s. 6. ment Act, 1888 (51 52 Vict.

(6) 6 7 Will. IV. c. 96, s. 6; c. 41), ss. 68, 100.

56 57 Vict. It serves, as is explained more fully below, to determine the c. 73, s. 6, n. proportions in which contributions levied by the county council for any purpose are to be apportioned among the parishes liable to contribute to such purpose.

Formerly a county rate basis was from time to time prepared by a committee appointed for the purpose by the quarter sessions of the county, 1 the basis coming, into operation and superseding the existing basis upon being confirmed, with or without alteration, by the quarter sessions. 2

The committee were also empowered, upon the requisition of quarter sessions, to revise the existing basis from time to time, " for the purpose of meeting any partial changes that may have occurred in the rateable value of portions of the property liable to be assessed " without preparing an entirely new basis. Alterations in the basis thus made came into operation upon confirmation by quarter sessions. 3

By the Local Government Act, 1888, 4 the business of quarter sessions and of their committee in respect of the preparation and revision of the basis for the county rate was transferred to the county council.

The county rate was formerly assessed on the several parishes and places in the county by the quarter sessions under the County Rates Act, 1852, 5 which required the rate to be assessed on the several parishes rateably according to the basis above-mentioned.

By the Local Government Act, 1888, 6 the business of the quarter sessions in respect of the making, assessing, and levying of county rates was transferred to the county council. The same Act, 7 moreover expressly empowers the county council, for the purpose of defraying their expenses, to obtain contributions from parishes in their county, assessing such contributions on all or some only of the parishes in their county, according as the purposes for which such contributions are required are "general county purposes" towards which the whole county is liable to contribute, or " special county purposes" towards which portions only of the county are liable to contribute. And it is by the same section enacted that, subject as in that or any other Act mentioned, " county contributions, whether for general or special county purposes, which are liable to be assessed on the parishes, shall be assessed on such



parishes in proportion to the annual value thereof, as determined by the standard or basis for the county rate, and all enactments applying to such standard or basis or to county rate shall (save as altered by this Act) apply so far as may be, consistently with the tenor thereof, to county contributions."

(1) 15 16 Vict. c. Si, ss. 2-15. (5) 15 16 Vict. c. 81, s. 21.

(2) It., s. 16. (6) 51 52 Vict. c. 41, s. 3 (1), (3) lb. s. 20. see also ss. 35 (1), 35 (5), 68, 78,.

(4) 51 52 Vict. c. 41, s. 3 (1); 81 (3), 100. see also ss. 35 (i) 3Â (5), 68, 78. (7) lb. s. 68.

Now therefore the assessment of the county rate takes the 56 57 Vict, form of the assessment on parishes in the county of county c- 73 s- 6 n-contributions by the county council.

The amount each parish is to contribute is estimated by the county council in a lump sum and payment of that sum is obtained by means of precepts issued to the guardians of the several unions comprising the parishes assessed. The guardians raise the necessary money in the same way that they raise contributions for poor law purposes, namely by orders on the overseers of the several parishes. The overseers in their turn raise the money by means of the poor rate. 1

The expressions " assessment " and " levying " of the county rate, c, are used in a somewhat vague manner, sometimes as referring to the process by which the county council assess, and if necessary compel payment of, the contributions of the several parishes, sometimes as referring to the assessment and levying of the poor rate out of which the county rate is ultimately paid.

Appeal against the county rate basis. â An appeal to quarter sessions against the county rate basis is given by sects. 17-19 of the County Rates Act, 1852. 2

Sect. 17 enables "any overseer or overseers of the poor, or other person charged with the collection and levy of county rate in any parish or place, or inhabitant or inhabitants thereof" to appeal, either on the ground that such parish or place is over assessed, or on the ground that some other parish or place is omitted from the basis or is under assessed. Twenty-one days' notice, previous to the first day of sessions, must be given of the appeal and of the cause and matter thereof. This notice, where the ground of appeal relates to a parish other than the appellants' parish, must be given to the overseers of the former parish, or, where there are no overseers, to the person charged with the collection and levy of the county rate. Where the ground of appeal is the over assessment of the appellants' parish the notice is required by the Act to be given to the clerk of the peace. Whether this notice should now be given to the clerk of the peace or to the clerk of the county council is not clear; and, where these (1) County Rates Act, 1852 (15 not entirely spent: see s. 36. The 16 Vict. c. 81), s. 26; as to the Act also contains provisions with powers of the guardians to obtain regard to the levy of the county contributions, see the note to sect. rate in parishes partly within the 11 post. The County Rates Act, county and partly without the same, 1852, provided that where there and in other exceptional cases; but was, at the passing of the Act, a these provisions also are now almost high constable of a hundred hold obsolete: see ss. 30-35.

ing office for life or during good (2) 15 16 Vict. c. 81, ss.

behaviour, the county rate should, 17-19; the power of quarter sessions to hear the appeal is expressly reserved by the Local Government through the guardians; but this Act, 1888 (51 52 Vict. c. 41), enactment must now be nearly if s. 8.

56 57 Vict. offices are held by different persons, it would be prudent to c. 73, s. 6, n. gi V e the notice to both.

The appeal would appear not to be confined to the first sessions held after the confirmation of the basis, but to be available at any time after such confirmation.

Sect. 18 1 enables the quarter sessions, upon the application of the appellant or the respondent to order a valuation of the parishes, c, in relation to which the appeal is brought, to be made, and to adjourn the appeal while the valuation is made.

Sect. 19 2 deals with the costs of the appeal. It provides that in the case of a successful appeal brought on the ground that a parish is over valued, the sessions shall order the appellant's costs to be defrayed by the county; that in other cases the costs are to be in the discretion of sessions; and that the expenses of a valuation made under sect. 18 are to be deemed costs in the appeal.

It would seem to be doubtful whether any appeal lies against a basis duly altered in pursuance of sect. 20 of the County Rates Act, 185 2. 3

The above-mentioned Act contains provisions, it should be mentioned, under which objections to a county rate basis may be made by overseers and others before the basis comes into force. 4 Such objections were by that Act to be heard by the committee of justices appointed for the preparation of the basis, and must now, it seems clear, be heard by the county council or their committee. Sect. 20 of the Act 5 contains somewhat similar provisions enabling objections to be made where the basis is revised to meet partial changes of value under that section. The functions of the overseers in relation to these objections appear not to be transferred to the parish council.

Appeal against the county rate. â An appeal to quarter sessions against a county rate is given by sections 22-25 of the County Rates Act, 1852. 6

Sect. 22 enables "the churchwarden or churchwardens, overseer or overseers" of any parish or place to appeal against a county rate if he or they think their parish aggrieved by the rate, " whether it be on account of the proportions assessed upon the respective parishes, townships, or places being unequal, or on account of some one or more of them being without sufficient cause omitted altogether from the rate, or on account of such parish, township, or place being rated at a higher proportion of the pound sterling according to the fair annual value of the property therein, or on account of some other parish or parishes, township or townships, place or (1) 15 16 Vict. c. Si, s. is. p. 40.

(2) lb. s. 19; see also s. 24. (6) lb. ss. 22-25. The powers (3) lb., s. 20, referred to ante, of quarter sessions as to appeals p. 40. against the county rate are reserved (4) lb. s. 14, and see sect. 13. by sect. 8 of the Local Government L (5) lb. s. 20, referred to, ante, Act, 1888 (51 52 Vict. c. 41).

places, being rated at a lower proportion of the pound sterling 56 57 Vict, according to the fair annual value of the rateable property c- 73. s- 6 n- therein than has been fixed and declared. as the basis of the rate of the said county, or on account of the

altered state of the value of the property assessed, or any part thereof, or shall have any other just cause of complaint whatsoever."

The appeal must be to the next sessions after the cause of appeal has arisen. Fourteen clear days' notice, previous to the first day of sessions, of the intention to appeal, and of the grounds of appeal, is required to be given to the parties against whose rate the appeal is intended to be made, also to the clerk of the peace and to the hundred constable. Whether this notice should now be given to the clerk of the peace or to the clerk of the county council is not clear; it would be prudent, where these offices are held by different persons, to give the notice to both.

Sect. 23 of the same Act 1 provides for the levy of the rate pending appeal, and for the repayment of sums paid pending the appeal in the event of the appeal being successful.

Sect. 24 3 provides, among other things, that the costs of the appeal shall be in the discretion of sessions.

Sect. 25 s enables quarter sessions to give costs to persons to whom notice of appeal may have been given though the appeal is not proceeded with.

Parish books. â Under the Vestries Act, 1818, 4 the overseers are required to provide minute-books for the vestry.

Vestry room. â The Vestries Act, 1850, 5 empowers the churchwardens and overseers, or overseers alone, as the case may require, of a parish, with the consent of the vestry and the sanction of the Local Government Board, to provide vestry rooms and to borrow money for the purpose. It does not seem clear whether these enactments are universally applicable, or whether they are confined to parishes with a population, according to the preceding census, exceeding 2000. 6 Having regard to the powers of the parish council under sect. 8 (1), the enactments above mentioned will cease to be of much importance in a rural parish.

Parochial office. â Under the Parochial Offices Act, 1861, 7 the overseers of a parish of which the population exceeds 4000, according to the last census, have power, with the consent of the vestry and of the Local Government Board, to provide parish offices. The powers of the parish council under sect. 8 (1), will, in rural parishes, to a great extent supersede this enactment.

(1) 15 16 Vict, c 81, s. 23. parish councils under this Act": (2) lb. s. 24. see sect. 89 and nd schedule.

(3) lb. s. 25. (5) 13 14 Vict. c. 57, ss. 4, 5- (4) 58 Geo. III., c. 69, s. 2, re (6) lb. s. 1.

pealed by the present Act "so far (7) 24 25 Vict. c. 125, s. 1.

as it relates to parish meetings and 56 57 Vict. Parish chest. â By the last-mentioned Act 1 it is enacted that c. 73, s. 6, n. " the overseers of any parish may, with the consent of the vestry, provide proper depositories of all the documents, books, and papers belonging to such parish for which no provision is otherwise made by law, and charge the cost thereof upon the poor rate. The powers of the overseers under this enactment appear to be the powers of the overseers as to the "parish chest" referred to in sub-sect. (1, c. ii.). With regard to the custody of parish documents, see further sect. 17, and the note to that section.



Fire engine and fire escape. â By the Poor Law Amendment Act, 1867, 2 it is enacted that "if the vestry of any parish, where there is no town council, local board, or other authority competent to provide the same, after due notice, shall resolve that the overseers shall provide any fire engine, ladder, or fire escape for general use in the parish, the overseers shall provide the same, and pay out of the poor rate the cost thereof, and of procuring a proper place wherein to keep the same, and of maintaining it, as well as any such engine, ladder, or escape acquired by the parish in any other manner for such use, in a fit state of repair, and the charges of such persons as may be necessary for the use thereof, and the cost of suitable implements and accoutrements."

Other provisions under which a fire engine may be provided for a parish, contained in the Lighting and Watching Act, 1833, 3 are referred to in the note to sect. 7, post.

Parish property. â The legal interest in property vested in the overseers, or churchwardens and overseers, of a rural parish with a separate parish council, other than property connected with the affairs of the church, or held for the benefit of an ecclesiastical charity, is transferred to the parish council under sect. 5 (2). The general powers of overseers to hold lands on behalf of their parish are dealt with in the note to that section.

Sub-sect. (1, c. hi.) of the present section transfers to the parish council any active powers of managing parish property at present possessed by the overseers.

Village greens and allotments. â The powers of the overseers to hold village greens are derived from the Inclosure Acts, and are referred to post, p. 52, in connection with allotments under those Acts.

The enactments relating to allotments fall into three groups: the first consisting of the enactments relating to allotments provided under the Poor Relief Act, 1819, 4 and the amending Acts, or under local Acts for the inclosure of land; the second of the enactments as to allotments contained in the Inclosure Acts, 1845 to 1882; and the third of the Allotments Acts, 1887 and 1890.

The two last-mentioned Acts, which are set out in the (1) 24 25 Vict. c. 125, s. 2. (3) 3 4 Will. IV. c. 90, s. 44.

(2) 30 31 Vict. c. 106, s. 29. (4) 59 Geo. III. c. 12.

Appendix, are considerably amended by sects. 9 and 10, post, 56 57 Vict, as well as by sub-sects. (3) and (4) of the present section, and c- 73. s- 6- n- are discussed in the notes to the later sections. The provisions of the earlier Acts as to allotments are dealt with below. Before discussing these Acts in detail it will, however, be convenient to state generally the effect of the present Act with regard to allotments held under their provisions for the benefit of a parish with a separate parish council.

Where any such allotment is held by the overseers, the legal interest of the overseers will vest in the parish council under sect. 5 (2), and any powers of management that the overseers may possess, will be transferred to the parish council by sub-sect. (1, c. iii.) of the present section. By virtue of the same clause also, where any Act requires land to be allotted to the overseers for the benefit of inhabitants of a parish, such land will be allotted to the parish council. Where the allotments are held by trustees, the property in the allotments may, with the consent of the Charity Commissioners, be transferred to the parish council, or to persons appointed by them, under sect. 14, (1), in which case the parish council or their appointees will hold the property on the

trusts, and subject to the conditions on which the trustees held the same. Whether the allotments are held by the overseers or by trustees, any powers vested by any Act in allotment wardens, or a committee, or allotment managers, are by sub-sect. (4) of the present section transferred to the parish council.

It should further be mentioned that certain powers for the management of any recreation ground or village green which is under their control, or to the expense of which they have contributed, are conferred on the parish council by sect. 8, (i, d).

Allotments under the Poor Relief Act, 1819, local Inclosure Acts, c. By the Poor Relief Act, 1819, 1 as amended by an Act of 1831, 2 the churchwardens and overseers of any parish, or the overseers alone in parishes with no churchwardens, were empowered to appropriate parish land, or to purchase or hire land to an amount not exceeding in the whole fifty acres, and, with the consent of the lord of the manor and the majority of the commoners to enclose waste land to the like amount, and to set the poor to work on such land at reasonable wages, or, with the consent of the vestry, to let portions of such land to any "poor and industrious inhabitant of the parish" to be cultivated by him, at such reasonable rent and for such term as the vestry should determine. 3 Like powers were given to guardians under local Acts. 4 (1) 59 Geo. III. c. 12. wardens, 59 Geo. III. c. 12, s. 35; (2) 1 2 Will. IV. c. 42. 1 2 Will. IV. c. 42, s. 3. As to (3) 59 Geo. II. c. 12, ss. 12, 13; the powers of the churchwardens 1 2 Will. IV. c. 42, ss. 1, 2, 4; and overseers to hold land, see the and see, as to the powers of over note to s. 5, ante.

seers where there are no church (4) 1 2 Will. IV. c. 42, s. 3.

56 57 Vict. By another amending Act of 1831, 1 the churchwardens and c. 73, s. 6, n. overseers were given power, with the consent of the Treasury, to enclose waste lands belonging to the Crown to the extent of fifty acres.

By the Allotments Act, 1832, 2 it was, after reciting that there were in many cases, in parishes inclosed under Acts of Parliament, allotments made for the benefit of the poor, chiefly with a view to fuel, which were comparatively useless and unproductive, enacted that the "trustees of the said allotments, together with the churchwardens and overseers of the poor, in parish vestry assembled," might and should let portions of any such allotment not exceeding one acre to one person, 3 to "industrious cottagers" fulfilling certain conditions, who were to be bound to cultivate the allotment so as to preserve the land in a due state of fertility. 4 Applications for allotments were to be entertained by the vestry, the trustees of the allotments being entitled to attend and vote at the vestry. 5 The rent was to be payable to the churchwardens and overseers on behalf of the vestry, 6 and provisions were made as to the recovery and application of the rent, and the recovery of possession of the land. 7 The vestry were empowered to let any of the said allotments found to lie at an inconvenient distance from the residences of the cottagers for the best rent that could be obtained, and hire land for the purposes of the Act of equal value more favourably situated. 8 It was further provided that no habitation should be erected on the allotments, 9 and that the Act should apply to land enclosed under the above-mentioned Acts of 1831, 10 or to land which should "in any other manner be found appropriated for the general benefit of the poor of any parish" so far as the Act might "be found applicable." n

By the Union and Parish Property Act, 1835, 12 it was enacted, among other things, that " all powers and authorities in and by" the Poor Relief Act, 1819, "given to churchwardens and overseers of the poor for taking land or ground into their hands, and for purchasing, hiring, and taking on lease any land; and all powers and authorities contained in " the two Acts of 1831 above-mentioned, 13 and in the Allotments Act, 1832, 14 " shall in future be exercised (under the control, and subject to the rules, orders, and regulations of the Poor Law (1) 1 2 Will. IV. c. 59. (5) lb. s. 3.

(2) 2 Will. IV. c. 42. ' (6) lb. s. 4.

(3) The Act also required an (7) lb. ss. 5-8. allotment to be not less than a (8) lb. s. 9. quarter of an acre, but this limita (9) lb. s. 10.

tion was removed by the Poor (10) 1 2 Will. IV. c. 42; I

Allotments Management Act, 1873 2 Will. IV. c. 59.

(36 Vict. c. 19), s. 10, itself re (11) 2 Will. IV. c. 42, s. ir.

pealed, but not so as to revive the (12) 5 6 Will. IV. c. 69, s. 4.

limitation it repealed, by the (13) 1 2 Will. IV. c. 42; 1 2

Statute Law Revision Act, 1883. Will. IV. c. 59.

(4) 2 Will. IV. c. 42, ss. 1, 2. (14) 2 Will. IV. c. 42.

Commissioners, 1 ) by the overseers of the poor in any parish 56 57 Vict, not under the management of a board of guardians, 2 and by c. 73, s. 6, n. the guardians of the poor of any union or parish formed or established by virtue of any statute or local Act; and all the aforesaid powers and authorities relating to the inclosing, purchasing, hiring, or taking any waste, common, or other land, for the purpose or purposes in the said Acts mentioned, shall extend and apply to and may be so exercised as aforesaid by the said overseers and guardians for the purpose of being used as the site of the workhouse, or of being occupied with a workhouse, or for any other of the purposes of the" Poor Law Amendment Act, 1834. 3

The effect of this obscurely worded enactment is not clear. It seems, however, that it did not transfer any land previously acquired by the overseers to the guardians, or affect the powers of the overseers as to such lands; but that its operation was confined to the acquisition of, and dealing with, land in the future. 4 It is believed that no attempt has ever been made by guardians of the poor to exercise their powers under this enactment for the purpose of providing allotments.

The Inclosure Act, 1845, contains provisions enabling inconvenient allotments made under any inclosure Act for the poor or other public purposes to be exchanged under certain circumstances for more convenient allotments; 5 provisions enabling defects in the manner in which local inclosure Acts may have been carried out to be remedied; 6 and provisions enabling the number of trustees required by a local inclosure Act, or by an award made under such an Act, for any local functions to be reduced. 7

The Inclosure Act, 185 2, 8 also, contains provisions for the exchange of allotments awarded under any inclosure award for any public or parochial purpose, or for the benefit of the inhabitants or others within any parish or manor, and for the declaration, in connection with such exchange, of new trusts.

The Poor Allotments Management Act 1873, 9 makes provisions with regard to the management, firstly of allotments provided under any Act for the inclosure of



land passed before the Inclosure Act, 1845, 10 for the benefit of the poor, or for field gardens, or recreation grounds or for any public purpose; and secondly, of allotments subject to the Allotments Act, 1832. 11 It provides for the appointment of a committee by (1) Now the Local Government Commissioners, vol. v., p. 109. Board. (5) 8 9 Vict. c. 118, ss. 149- (2) There are no longer any such 151; as to this Act and the Amend-parishes. ing Acts see post, p. 50.

(3) 4 5 Will. IV. c. 76. (6) lb. ss. 152-154, 156, amended (4) The subsequent legislation by 10 11 Vict. c. III, s. 5. confirms this view; see also Doe (7) 8 9 Vict. c. 118, s. 158. d. Norton v. Webster (1840), 4 (8) 15 16 Vict. c. 79, s. 21. P. D. 270; 12 A. E. 442; (9) 36 Vict. c. 19.

9 L. J. Q. B. 373; 4 Jur. 1010; (10) 8 9 Vict. c. 118. Official Circulars of the Poor Law (11) 2 Will. IV. c. 42.

56 57 Vict, the trustees of allotments provided under an Act for inclosure c. 73, s. 6, n. 0 f i an( j as above mentioned, or by the vestry of any parish having powers to make orders as to allotments under the Allotments Act, 1832, whenever the number of trustees, or of persons entitled to attend the vestry, as the case may be, for the time being, exceeds twenty. 1 A committee so appointed are to be substituted for, and exercise, the powers of the allotment trustees or vestry as the case may be." 2 If any authority required by the Act to appoint a committee fail to do so, a committee may be appointed by the Board of Agriculture. 3 The Act further contains certain amendments of the Allotments Act, 1832 as to the letting of the allotments, the application of rent paid for them, c; 5 enables land acquired under the Poor Relief Act, 1819,Â or the amending Acts of 1831, 7 above-mentioned, to be disposed of if it is found unsuitable for the purposes of those Acts, 8 and contains a saving clause as to the jurisdiction of the Charity Commissioners. 9

The Commons Act, 1876, enacts that "notwithstanding anything in any other Act contained, it shall not be lawful. to authorise the use of or to use " any fuel allotment set out in pursuance of any inclosure Act passed prior to 1845, or under the Inclosure Acts, 1845 to 1868 10 " or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out." A proviso to this enactment, however, enables the Charity Commissioners to authorise the use of a fuel allotment as a recreation ground and field gardens or for either of those purposes, and to establish a scheme accordingly, or to authorise the exchange of such an allotment, or part thereof, for the purpose of obtaining land better suited for the purpose for which the allotment was set out. 11 The same Act contains a section 12 quoted post, p. 55, applicable to the letting of land allotted to the poor for the purpose of cultivation under any Inclosure Act whatsoever.

The Allotments Extension Act, 1882, 13 provides that " all trustees in whom lands are vested or by whom the same are held or managed for the benefit of the poor of any parish or place in or adjoining to that in which such lands are situate, (1) 36 Vict. c. 19, s. 3; as to partially repealed by the Allot-the appointment and proceedings ments Extension Act, 1882 (45 of the committee, see ib. ss. 5-8. 46 Vict. c. 80), s. 6.

(2) Ib. s. 4. (6) 59 Geo. III. c. 12.

(3) Ib. s. 9. The powers of the (7) 1 2 Will. IV. c. 42; 1 2 Inclosure Commissioners, referred Will. IV. c 59.

to in this section are now vested in (8) 36 Vict. c. 19, s. 15.

that Board; see post, p. 51. (9) Ib. s. 16.

(4) 2 Will. IV. c. 42. (10) As to these Acts, see post, (5) 36 Vict. c. 19, ss. 10-14. PP- 5Â-57-

Sect. 10 is repealed by the Statute (n) 39 40 Vict. c. 56, s. 19.

Law Revision Act, 1853, but not (12) Ib. s. 26.

so as to revive the enactment 1 it (13) 45 46 Vict. c. So. repealed; sect. 12 is impliedly and whereof the rents or produce are distributed in gifts of 5 6 57'ivict. money, doles, fuel, clothing, bread, or other articles of susten- c- 73 s- 6 "â ance or necessity, shall, where such lands are not otherwise used for the benefit of the parish in which it (sic) is situate as a recreation ground, or otherwise for the enjoyment or general benefit of the inhabitants, take proceedings," subject to the provisions of the Act " for letting such lands in allotments to cottagers, labourers, and others." 1 The expression " trustees " is defined a as meaning " trustees, feoffees, and managers, whether corporate or sole, or a committee of the same in such cases as are provided for in the Poor Allotments Management Act, 1873." 3 The Charity Commissioners are however empowered to grant a certificate, which is revocable, that lands which the Act would otherwise require to be let in allotments are unsuitable for the purpose, in which case the trustees are not bound to set apart under the Act the lands to which the certificate applies. 4 The Act amends the Allotments Act, 1832, 5 as to the persons to whom allotments may be let, 6 but is otherwise inapplicable to lands with regard to which the earlier Act has been put in force. 7 The allotments are to " be let free of all charges (that is to say, tithe), tithe-rentcharge, taxes, and outgoings whatsoever, and. at such rent as land of the same quality is usually let for in the same parish, with such addition as is necessary to satisfy the said charges;" the expression " outgoings" being used as including " the expense of getting possession, and allotting, dividing, and fencing the field or portion of land set apart, and collecting the rents, and any sum payable for such draining of the allotments and means of approach to the allotments as may be necessary." 8 The trustees are to be deemed the occupiers of the allotments for the purposes of rates, taxes, tithes, and tithe rentcharge. 9 One person is not to hold more than one acre. 10 And no building is to be erected for or used as a dwelling or workshop on any part of any allotment. 11 The Act enables the trustees to let land found to lie at an inconvenient distance from the residences of any cottagers and labourers for the best rent that can be obtained and to hire land in lieu thereof for the purposes of the Act more favourably situated. 12 It makes provision for the case of land held partly for the benefit of the poor and partly for other objects 13; enables the trustees to make rules for the appointment and powers of local managers of allotments, and otherwise for carrying its provisions into effect, which rules may however be disallowed by the Charity Commissioners, and maybe made the subject of a complaint to that (1) 45 46 Vict. c. So, s. 4. (8) lb. s. 13 (2).

(2) lb. s. 1. ( 9 ) lb. s. 13 (3)."

(3) 36 Vict. c. 19. (10) lb. s. 13 (4).

(4) 45 46 Vict. c. 80, s. II. (11) lb. s. 13 (5).

(5) 2 Will. IV. c. 42. (12) lb. s. 5.

(6) 45 46 Vict. c. So, s. 6. (13) lb. s. 8.

56 57. Vict, body; 1 enables a complaint to be made to the Charity Com-c 73 s-G n- missioners if the trustees fail to carry out the Act; 2 and contains provisions as to the method of letting allotments, 3 as to the persons to whom the allotments are to be let, 4 as to the recovery of the rent of the allotments, 5 and as to cases where the trustees are unable to let allotments. 6 The Act lastly provides that in certain schemes of the Charity Commissioners a provision is to be inserted authorising the trustees of the charity to set apart portions of the land held by them to be let in allotments in the manner provided by the Act; 7 and contains a saving for the powers conferred on the trustees of any charities or on the Charity Commissioners by the Endowed Schools Acts or the Acts amending the same. 8

The Allotments Act, 1887, 9 contains provisions enabling trustees within the meaning of the Allotments Extension Act, 1882, to transfer land held by them for allotments to the sanitary authority to be held by them for the purposes of allotments under the Act of 1887.

The last Act directly affecting such allotments as have been dealt with is the Allotments Rating Exemption Act, 1891, 10 which provides that allotments shall enjoy the same partial exemption from rates under the Public Health Act, 1875, u as is enjoyed by woodlands, market gardens, c.; and defines the expression " allotment" as meaning " any parcel of land not more than two acres in extent and let as an allotment, and cultivated as a garden or a farm, or partly as a garden and partly as a farm."

Allotments under the Inclosure Acts, 1845 to 1882. 12 To render the provisions of these Acts as to allotments intelligible, it is necessary to premise a short account of their general scheme.

Under the Inclosure Act, 1845, 13 provision was made for the appointment of Inclosure Commissioners. 14 The powers of the Inclosure Commissioners were subsequently vested in a body (1) 45 46 Vict. c. 80, s. 9. 15 16 Vict. c. 79; 17 18 Vict.

(2) lb. s. 10. c. 97; 20 21 Vict. c. 31; 22 (3) lb. s. 13 (1). 23 Vict. c. 43, may each of them be (4) lb. s. 7. cited as " the Inclosure Act" with (5) lb. s. 12. the addition of the year in which it (6) lb. s. 13 (6). was passed. The remaining six (7) lb. s. 14. Acts are: the Inclosure Commis lb. s. 15. As to the En- sioners Act, 1851 (14 15 Vict.

dowed Schools Acts, see the note c. 53); the Inclosure, etc., Expenses to sect, impost. Act, 1868 (31 32 Vict. c. 89); (9) 50 51 Vict. c. 48, s. 13 (2), the Commons Act, 1876 (39 40 set out in the Appendix. Vict. c. 56); the Commons (Ex-do) 54 55 Vict. c. 33. penses) Act, 1878 (41 42 Vict, (n) 38 39 Vict. c. 55, see ss. c. 56); the Commons Act, 1879 (42 211 (1) (b), 230. 43 Vict. c. 37); and the Com- (12) These Acts are fifteen in monable Rights Compensation Act, number; nine out of the first ten, 1882 (45 46 Vict. c. 15).

8 9 Vict. c. 118; 9 10 Vict. (13) 8 9 Vict. c. 118.

c. 70; 10 11 Vict. c. in; 11 12 (14) lb. ss. 1-8, now repealed.

Vict. c. 99; 12 13 Vict. c. 83; who were at first styled the Copyhold Commissioners, Tithe 56 57 Vict. Commissioners, or Inclosure Commissioners, according to the c. 73, s. 6, n. particular capacity in which they might be acting, but who were afterwards styled the Lands Commissioners. 1 Now, under the Board of Agriculture Act, 1889,



the powers of the Inclosure Commissioners are vested in the Board of Agriculture to whom the powers of the Lands Commissioners were by that Act transferred. 2

The earlier Acts applied originally only to the inclosure of commons, but, by the Commons Act, 1876, 3 they were extended to the regulation of commons. 4 The general course of procedure is shortly as follows 5:

Upon the application of persons interested in any common 6 for a provisional order for enclosing or regulating the same, the Board of Agriculture may order a local enquiry to be held. 7 The result of the local enquiry is reported to the Board, 8 who may then frame a draft provisional order for the enclosure or regulation of the common, as the case may be, which is deposited for the consideration of the parties interested. After certain further steps the Board may confirm the order, with or without amendments, and certify that it is expedient that the order should be confirmed by Parliament. 9 Thereupon an Act of Parliament is usually passed confirming the order. The Act may of course contain any provisions Parliament think fit to insert; but, subject to any such provisions, and to any provisions contained in the order confirmed by Parliament, the provisions of the Inclosure Acts will apply to the inclosure or regulation of the common in a question. 10

The course of proceedings marked out by the Inclosure Acts, after an Act authorising the inclosure of a common has been passed, is shortly as follows 11:

At a meeting of the persons interested in the common a (1) See 14 15 Vict. c. 53; 45 of the Inclosure Commissioners 46 Vict. c. 38, s. 48 (1), now without an Act of Parliament, the repealed changes have, for the most part, (2) 52 53 Vict. c. 30, s. 2. been in matters of detail.

(3) 39 40 Vict. c. 56. (6) As to who are persons interested in a common within the expression "common," which is the meaning of the Acts: see 8 9 employed in the Commons Act, Vict. c. 118, ss. 16-23; x 7 J 8 1876 (39 40 Vict. c. 56), s. 37, Vict. c. 97, s. 4; 20 21 Vict., to mean lands subject to be inclosed c. 31, s. 4.

under the Inclosure Acts, 1845 to (7) 39 40 Vict. c. 56, ss. 2, 9, 1868, and is not confined to commons 10.

commons in the popular sense, see 8 (8) lb. s. n.

9 Vict. c. ns, ss. 11-15. (9) lb. s. 12 (9).

(5) The procedure has of course (10) 8 9 Vict. c. 118, s. 32; varied from time to time as the and see 39 40 Vict. c. 56, s. 13. successive Acts have been passed; (11) As to the application of the but, except that for a few years earlier Acts in the case of the regulation of commons might under some circumstances of a common: see 39 40 circumstances be made under an order Vict. c. 56, s. 13.

56 57 Vict., valuer is appointed, 1 to whom instructions not inconsistent c. 73, s. 6, n. with the provisional order or confirming Act may be given by such persons subject to the confirmation of the Board of Agriculture. 2 The valuer, who may be assisted under certain circumstances by other persons, 3 holds meetings for the examination of claims and objections, c., 4 and proceeds, after setting out roads, watercourses, and the like, 5 allotting portions of the land for various public purposes, 6 to allot the remainder of the land among the various persons interested. 7 Then, after certain intermediate proceedings the valuer, under the direction of the Board of Agriculture,

draws up his award in the matter of the inclosure and the award is confirmed by the Board. 8 The award may be subsequently amended under certain circumstances by the Board of Agriculture; but subject to such alterations it is binding and conclusive on all persons, and is apparently practically unimpeachable. 9

The provisions of the Acts directly relating to allotments, village greens, recreation grounds, &c., may now be referred to. Village greens. A village or town green is not to be inclosed under the Acts, but where an inclosure of land is made in the parish in which the town or village green is situate, the Board of Agriculture may direct that "such town green or village green, provided such green be of equal or greater extent, be allotted to the churchwardens and overseers of the poor of such parish, in trust to allow the same to be used for the purposes of exercise and recreation." 10 What the words "provided such green be of equal or greater extent" refer to, does not appear.

The allotment of such green may be in addition to other land allotted for the purposes of exercise or recreation, or, if the Board of Agriculture think it sufficient, may be in substitution for other land which might have been required to be allotted for such purposes. 11 The Acts contain provisions as to the fencing, draining and levelling of a village green so allotted, the preservation of the surface of the same, and the definition of its boundaries in certain cases; 12 and provisions, which are not confined to village greens allotted under the Inclosure Acts, for the protection of village greens from nuisances and encroachments. 13

Recreation grounds, and allotments for the labouring poor. The Board of Agriculture may, in a provisional order for the inclosure of a common, in certain cases, require the appropriation (1) 8 9 Vict. c. 118, s. 33. (7) 8 9 Vict. c. 118, ss. 76, 77, (2) lb. ss. 34, 36. 79-90.

(3) lb. ss. 35, 37. (8) lb. s. 104.

(4) lb. s. 46, and see ss. 47-54. (9) lb. s. 105.

(5) lb. ss. 61-68; n 12 Vict. (10) lb. s. 15. c. 99, s. 4; 15 16 Vict. c. 79, (11) lb. s. 2; 17 18 Vict. c. 97, s. 9. (12) 8 9 Vict. c. 118, ss. 15, 73.; (6) See 8 9 Vict. c. 118, 15 16 Vict. c. 79, s. 14.

ss. 72-75; 20 21 Vict. c. 31, (13) 20 21 Vict. c. 31, s. 12; s. 13. 39 40 Vict. c. 56, s. 29.

of allotments for a recreation ground and for the labouring 56 57 Vict. poor; 1 and, in a provisional order for the regulation of a c- 73 s- 6 A n-common, may require the appropriation of an allotment for the labouring poor."- The instructions given to the valuer may, so far as is consistent with the provisional order and confirming Act, require the appropriation of allotments for, among other public purposes, a recreation ground, and allotments or field gardens for the labouring poor; 3 and the valuer, in pursuance of, or in any manner not inconsistent with, the provisional order, confirming Act and instructions, is to allot land accordingly for a recreation ground, as an allotment for the labouring poor, and for other public purposes. 4

Provision is made for the substitution for the land originally intended or appropriated for such allotments, either of other portions of the land to be inclosed, or, by way of exchange, of other land in the neighbourhood; 5 and as to the situation of allotments for a recreation ground or for field gardens. 6

The land appropriated for a recreation ground is to be allotted to the churchwardens and overseers. 7 Under the Inclosure Act, 1845, the allotment might be made to other persons, 8 but this provision is now repealed. 9 Allotments made under that Act to persons other than the overseers and churchwardens however remain vested in such persons or in their successors. Provisions are made for the fencing, drainage, and levelling of an allotment for recreation, for the preservation of the surface of the same, and for the letting of the herbage. 10 The rents arising from the letting of the herbage where the allotment is vested in the churchwardens and overseers, are to be applied in the first place in maintaining and repairing the fences of the allotment and keeping the surface thereof drained and level; and the surplus rent is to be applied to all or some of the following purposes:â Improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage or fencing thereof; in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood; or in improving the field gardens allotted under the Acts in the same parish or neighbourhood or maintaining the drainage and fencing thereof. 11 Churchwardens and overseers acting as trustees of recreation grounds are required to make periodical reports to the Board of Agriculture. 12 (1) 8 9 Vict. c. 118, ss. 30, 31, (7) 8 9 Vict. c. 118, s. 73; partly repealed by the 39 40 Vict. 39 40 Vict. c. 56, s. 25.

c. 56, ss. 24, 34; and see 39 40 (8) 8 9 Vict. c. 118, ss. 73, Vict. c. 56, ss. 7, 12 (2), 23. 74.

(2) 41 42 Vict. c. 56, s. 4. (9) 39 40 Vict. c. 56, s. 25.

(3) 8 9 Vict. c. 118, s. 34. (10) 8 9 Vict. c. 118, ss. 73, (4) lb. s. 73. 74; 15 16 Vict. c. 79, s. 14.

(5) 8 9 Vict. c. 118, ss. 92, (11) 8 9 Vict. c. 118, s. 73; 149-151; 9 10 Vict. c. 70, s. 4; 39 40 Vict. c. 56, s. 27; 42 15 16 Vict. c. 79, s. 21; 39 cs: 43 Vict. c. 37.

40 Vict. c. 56, s. 22. (12) 39 40 Vict. c. 56, s. 28.

(6) 39 40 Vict. c. 56, s. 23.

56 57 Vict. Allotments for the labouring poor to be used as field gardens c 73, s. 6, n. ar6j un l ess the Board of Agriculture otherwise direct, to be cleared, drained, fenced, levelled, and otherwise fitted for immediate use and occupation by the valuer; and the expenses of so preparing the allotments are to be paid as part of the general expenses of the enclosure. 1

Allotments for the labouring poor are to be vested in the churchwardens and overseers. 2 Such allotments were formerly required to be made subject to a rent-charge, 3 but this is no-longer the case. 4 Allotments made subject to such a rent-charge remain, however, subject to the same. 5 The Allotments are, under the Acts, to be managed by " allotment wardens " 6

With regard to the letting of the allotments, it is provided by the Inclosure Act, 1845, 7 that " the allotment wardens shall from time to time let the allotment under their management in gardens not exceeding a quarter of an acre each to such poor inhabitants of the parish for one year, or from year to year, at such rents, payable at such times, and on such terms-and conditions, not inconsistent with the provisions of this Act, as they shall think fit: provided always, that the commissioners s may frame such regulations, not inconsistent with the provisions of the Act, for the letting



of such allotments as aforesaid, as they may think advisable, and such regulations shall be obligatory on the allotment wardens during five years from the date thereof or during such shorter period as the commissioners shall direct: provided also, that the gardens so to be let shall be let free of all tithe or tithe rent-charge (if any), rates, taxes, and assessments whatsoever, and shall before the first letting thereof, and once at least in every ten years after such first letting, be valued by a competent person to be appointed by the allotment wardens for that purpose, who shall estimate the full rent which the same would be worth to be let by the year for farming purposes, all tithes or tithe rent-charge, rates, taxes, and assessments, being borne by the landlord, and shall verify such valuation by solemn declaration under the statute; and the rent at which the same gardens respectively shall be let shall be not below the full yearly value of the land according to the last of such valuations; and the allotment wardens shall, for the purposes of all rates and taxes, be deemed the occupiers of such allotment, and shall pay all rates and taxes, tithes and tithe rent-charge (if any), in respect thereof: provided always, that no building whatsoever shall, under any such letting as (1) 39 40 Vict. c. 56, s. 21. (7) lb. s. 109.

(2) 8 9 Vict. c. 118, s. 73. (8) Now the Board of Agricul- (3) lb. ss. 31, 73, 78. ture.

(4) 39 40 Vict. c. 56, s. 24. (9) The words in italics were (5) As to the payment, recovery impliedly repealed by the Commons and application of the rentcharge, Act, 1876 (39 40 Vict. c. 56), etc., see 8 9 Vict. c. 118, s. 75; s. 26, and expressly by the Statute 15 16 Vict. c. 79, ss. 18, 19. Law Revision Act, 1891.

(6) 89 Vict. c. 118, s. 108.

aforesaid or otherwise, on any pretence, be erected for or used 56 57 Vict, as a dwelling on any such garden or on any part of any such c- 73 s- 6 n-allotment; and in case any such building shall be erected or used as aforesaid contrary to this provision, the allotment wardens shall forthwith pull down the same, and sell and dispose of the materials thereof, and the produce of such sale shall be applicable in like manner as the rents of such gardens.

This enactment is amended by sect. 26 of the Commons Act, 1876, 1 which, after reciting certain of its provisions, enacts as follows: " allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same, or any unlet portion thereof, in gardens not exceeding an acre each to such inhabitants as aforesaid: further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates, taxes, tithes, tithe rent-charge, and the rent-charge charged on the said allotments under the provisions of ' The General Inclosure Act, 1845,' but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within

a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

"This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector, or vicar and churchwardens, overseers, managers, or any other person or persons whatever, and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens."

With regard to the recovery of possession of the field gardens, it is provided by the Inclosure Act, 1845, 2 that "the rent reserved upon the letting of any garden by the allotment wardens shall at any time be in arrear for forty days, or if at any time during the tenancy, being not less than three calendar months after the commencement thereof, it shall appear to the allotment wardens that the occupier of such gardens shall not have duly observed the terms and conditions of his tenancy, or shall have gone to reside more than one mile out of the parish, (1) 39 40 Vict. c. 56, s. 26. (2) 8 9 Vict. c. 118, s. no.

56 57 Vict, then and in every such case the allotment wardens shall serve c. 73, s. 6, n. a notice upon such occupier, or in case he shall have gone to reside out of the parish shall affix the same to the door of the church of the parish, determining the tenancy at the expiration of one month after such notice shall have been so served or affixed, and thereupon such tenancy shall be determined accordingly: provided always, that in every such case the allotment wardens or their incoming tenant shall pay to the occupier whose tenancy shall have been so determined a fair recompense in money for any crops (not being crops prohibited by the terms of such tenancy) which may be growing on such garden at the time of such determination, and for any manure left on such garden, or any benefit accruing from the manuring of such garden to the wardens or their incoming tenant; and the justices to whom application may be made for a warrant to give possession of such garden shall settle the amount of such recompense, in case the parties differ about the same, and stay the execution of such warrant until the same shall have been paid or tendered, or (in case such occupier be absent) until the payment thereof shall have been secured to the satisfaction of such justices."

The same Act provides, 1 that in case, upon the termination of the tenancy of a field garden, the occupier refuses to quit and deliver up possession thereof, or if any other person unlawfully enters upon, takes or holds possession of such garden, or of any part of such allotment, the allotment wardens may recover possession of the same under the Small Tenements Recovery Act, 1838, 2 which enables proceedings for the recovery of the possession of small tenements to be taken in a summary way before justices of the peace.

The rents of the field gardens are to be payable to the allotment wardens, who are to have the same remedies for the recovery thereof by distress or otherwise as if the legal estate in the allotments were vested in them. 3 Such rents are to be applied in the first place in payment of all rates, taxes, tithes, tithe rent-charge, and of the rent-charge, if any, charged on the allotment, and of the expenses of the allotment wardens under the Acts; and the surplus is to be applied in improving the field gardens or any of

them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood. 4

The allotment wardens are required to make periodical reports as to the field gardens to the Board of Agriculture. 5

The Commonable Rights Compensation Act, 1882, 6 contains provisions under which money paid under the Lands Clauses Acts, or any other Act, to a committee of commoners as (1) 8 9 Vict. c. 118, s. in. c. 56, s. 27.

(2) r 2 Vict. c. 74. (5) 39 40 Vict. c. 56, s. 28.

(3) 8 9 Vict. c. 118, s. 112. (b) 45 46 Vict. c. 15.

(4) lb. s. 112; 39 40 Vict.

compensation for commonable rights, c, may, among other 56 57 Vict, objects, be applied in the purchase of land to be used as a c- 73 s. 6, 6. recreation ground for the neighbourhood. 1 Land so purchased is to be conveyed to the local authority, and to be held and managed by them under the provisions of the Inclosure Acts, 1845 to 1878. 2 For the purposes of the Act, the local authority in a rural parish are the churchwardens and overseers. 3

It remains to mention that the Allotments Act, 1887, 4 enables the allotment wardens to transfer the management of land appropriated as allotments for the labouring poor under the Inclosure Acts to the sanitary authority, in which case the provisions of the Act of 1887 will apply to such land; and to call attention to the provisions of the Allotments Rating Exemption Act, 1891, 5 referred to, ante, p. 50.

Fuel allotments, 6rc. 6 Allotments appropriated under the Inclosure Acts for public purposes other than those already referred to, with the exception of allotments for the supply of road material, which are to be allotted to the highway authority, 6 may be allotted to such persons as the valuer with the approbation of the Board of Agriculture may think fit; but in every case in which the valuer with such approbation does not think it proper or necessary to direct the same to be otherwise allotted, such allotments are to be made to the churchwardens and overseers to be held on trust for the purposes for which the same shall be allotted. 7

Among these purposes is the supply of fuel to the poor or other inhabitants of the parish. The provisions of the Commons Act, 1876, 8 referred to ante, p. 48, as to the diversion of fuel allotments to other purposes, are applicable, it should be observed, to fuel allotments made under the Inclosure Acts.

Sale, exchange, and letting of parish property. 8 By sect. 8 (2) the parish council are directly given powers, subject to certain conditions, to sell, exchange, or let any land or buildings vested in them. The powers as to the sale, c, of parish property which are transferred to them by the present section extend to parish property that may not be so vested in them, and, even in the case of property vested in the parish council, may not infrequently be found useful, as obviating difficulties as to title, simplifying conveyances, rc.

The principal Acts conferring on guardians the powers in question are the Union and Parish Property Act, 1835, 9 an Act of 1837, 10 and the Parish Property and Parish Debts Act, 1842. 11 These Acts enable the guardians of any parish or union, with the



approbation and subject to the rules, orders, and regulations of the Local Government Board, to sell, (1) 45 46 Vict. c. 15, s. 2 (1). (6) 8 9 Vict. c. 11S, s. 72.

(2) lb. s. 2 (5). (7) lb. s. 73.

(3) lb. (8) 39 40 Vict. c. 56, s. 19.

(4) 50 51 Vict. c. 48, s. 13 (1), (9) s 6 Will. IV. c. 69.

set out in the Appendix. (10) 7 Will. IV. 1 Vict. c. 50.

(5) 54 55 Vict. c. 33. (n) 5 6 Vict. c. 18.

56 57 Vict, exchange, let, or otherwise dispose of any workhouse, tene-c 73, s. 6, n. ments, buildings, land, effects, or other property belonging to their parish or to any parish comprised in their union, as the case may be, or held in trust for any such parish or for the parishioners, ratepayers, or inhabitants thereof; subject to a proviso that no such sale, exchange, or letting of any workhouses, tenements, buildings, or land, is to take place without the consent of a majority of the ratepayers and owners of the parish. 1 The Poor Law Act, 1889, 2 however, has rendered the consent of the owners and ratepayers unnecessary in the case of a single parish with a separate board of guardians. And by sect. 52 (1) of the present Act, the consent of the parish meeting is, in a rural parish, substituted for that of the owners and ratepayers.

In the Acts above referred to, the expression " parish" means poor law parish, and the expression " guardians" includes guardians under a local Act. 3

The powers of the guardians under the Acts extend to copyhold land; 4 and special provisions are made for the enfranchisement of copyhold land in connection with the exercise of such powers; 5 but the Acts do not authorise the sale, c, of any property given or bequeathed by way of charitable donation, or which has been allotted in right of some charitable donation or otherwise for the poor persons of any parish and not for the general benefit of the ratepayers, parishioners, or inhabitants of the same. 6

The Acts provide for the application of the proceeds of a sale or exchange effected under them 7 and for the form of conveyances; 8 and enable conveyances to be made without the concurrence of trustees in whom the legal estate may be outstanding. 9

With regard to property in which more parishes than one are interested, the Parish Property and Parish Debts Act, 1842, 10 contains the following enactment:â "Where several parishes shall have been or shall be jointly interested in any workhouse, tenements, buildings, lands, whether of freehold, copyhold, or customary tenure, effects or other property, it (1) 5 6 Will. IV. c. 69, s. 3; Poor Law Amendment Act, 1834 5 6 Vict. c. 18, s. 2. As to the (4 5 Will. IV. c. 76), s. 109. consent of the rate-payers and (4) 7 Will. IV. 1 Vict. c. 50, owners, see the Poor Law Amend s. I.

ment Act, 1834 (4 5 Will. IV. (5) lb. ss. 2, 3.

c. 76), s. 40; the Poor Law (6) 5 6 Vict. c. 18, s. 2.

Amendment Act, 1844 (7 8 (7) 5 6 Will. IV. c. 69, s. 3.

Vict. c. 101), ss. 14-16; and the (8) lb. s. 6; 7 Will. IV. 1 Vict.

Poor Law Amendment Act, 1867 c. 50, s. 4; and see the Divided (30 31 Vict. c. 67) s. 11. Parishes and Poor Law Amend- (2) 52 53 Vict. c. 56, s. S. ment Act, 18S2 (45 46 Vict.

(3) 5 6 Will. IV. c. 69, s. 9; c. 58), s. 14.

5 6 Vict. c. is, s. 9; the Poor (9) 5 6 Vict. c. 18, s. 3.

Law Amendment Act, 1842 (5 6 (10) lb. Vict. c. 57), s. 'is; and see the shall be deemed to have been and shall be lawful for the said 56 57 Vict. commissioners, 1 upon the application of the overseers of the c- 73 s- 6 "â major part of such parishes, and with the consent of the ratepayers and owners of property in the major part of such parishes, to be ascertained in the manner directed by the" Union and Parish Property Act, 1842, "to order the same to be sold, let, exchanged, or disposed of by the guardians of the union in which such parishes or the greater part thereof shall be situate, in such manner, and subject to such rules, orders, and regulations, as the said commissioners shall deem fit; and it shall be deemed to have been and to be lawful for the said commissioners to direct the application of the produce arising from such sale, letting, or disposition in the same manner and to and for the same purposes as the produce arising from the sales of property belonging to other parishes may be applied to."

The Sale of Exhausted Parish Lands Act, 1876, 2 provides that " where land has been allotted to or otherwise acquired by a parish, whether in the name of the surveyor of highways or other trustees, or generally for the purpose of the supply of materials for the repair of the public roads and highways in such parish, and also for the repair of private roads therein, or for some other purpose, public or private, and the materials in such land shall be exhausted, or shall not be suitable or required, and the land shall not be available for such other purpose, if any, the same shall be dealt with as land which falls within the operation of the third section of the Union and Parish Property Act, 1835, and the Parish Property and Parish Debts Act, 1842, subject to the provisions hereinafter contained."

The Act requires the Local Government Board, before issuing their order for the sale of the land, to hear and determine objections and claims; provides for the decision of disputed claims, and for dealing with the interests of persons under disability; gives the adjoining owners a right of preemption; makes provision for dealing with mining rights; and provides for the application of the proceeds. 3 The expression " parish" is defined as including " every township or other place separately maintaining its own highways, except that where such township is not a parish within the operation of the above-mentioned Acts of the years 1835 and 1842 respectively, the proceedings to be taken under them shall be restricted to such township or place." And it is provided that the overseers of the poor law parish comprising the township or place shall discharge the duties by the Act rendered necessary for it in like manner as if it were co-extensive with such parish. 4

(1) Now the Local Government (3) lb. ss. 2-6. Board. (4) lb. s. 7.

(2) 39 40 Vict. c. 62, s. 1.

56 57 Vict. The Act applies, it will be noticed, only to land held partly c. 73, s. 6, n. for the supply of materials for the repair of highways, and partly for some other purpose. Enactments relating to the sale of land held for the supply of materials for the repair of highways only are referred to in sect. 52, and the note to that section, .

It should be observed that there is nothing in the present Act to affect the powers of the guardians or of the owners and ratepayers under the above-mentioned Act of 1876 in relation to property belonging to a " parish " within the meaning of that Act which is not a poor-law parish.

Sect. 7 of the Open Spaces Act, 1887, 1 provides that "any corporation other than municipal corporations- or body of persons having power, either with or without the consent of any other corporation or body of persons, to sell land belonging to such corporation or body may, but with the like consent (if any), convey, for valuable or nominal consideration or by way of gift, to any urban or rural authority such land, or any part thereof, for the purpose of the same being preserved as an open space for the enjoyment of the public, and may convey the same with or without conditions "; and further provides that " where a corporation having power under this section to convey land are themselves the urban or rural authority, this section shall enable such authority to appropriate their land for an open space."

The Local Government Board appear to regard. this section as authorising the guardians of a union, with the consent of that Board, and of the ratepayers and owners, to convey or appropriate parish land for the purposes of an open space: and the Board have issued an Order dated the 20th November, 1891," 2 containing regulations as to the method of obtaining the consent of the ratepayers and owners under the Union and Parish Property Act, 1835, the Sale of Exhausted Parish Lands Act, 1876, or the Open Spaces Act, 1887.

It is the practice of the Local Government Board when application is made to them respecting a proposal that the guardians of a union should sell, let, or otherwise dispose of parish property, to indicate to the parish officers the proper mode of procedure to be adopted by them with a view to obtaining the consent of the ratepayers and owners of property to the proposal; to furnish the officers with an abstract of the statutory provisions relating to the voters and the scale of votes at meetings of ratepayers and owners under the Poor Law Amendment Act, 1834, and with a copy of the regulations prescribed by the General Order on the subject. 3

Other enactments, under which parish property may be (1) 50 51 Vict. c. 32, s. 7. (3) See the Report of the Local (2) London Gazette, 24th Nov. Government Board for 1892-93, at 1891, p. 6232. p. xcix.

disposed of, are mentioned in the note to sect. 8, and in sect. 52, 56 57 Vict, and the note to that section. c- 73. s- 6 n-

Complaint or representation as to unhealthy houses or obstructive buildings. â The provisions of the Housing of the Working Classes Act, 1890, 1 under which such a complaint or representation as is referred to in sub-sect. (2) may be made, are comprised in Part II. of that Act, and are as followsâ

Sect. 31.â (1.) " If in any district any four or more householders living in or near to any street complain in writing to the medical officer of health of that district that any dwelling-house in or near that street is in a condition so dangerous or injurious to health as to be unfit for human habitation, he shall forthwith inspect the same, and transmit to the local authority the said complaint, together with his opinion thereon, and if he is of opinion that the dwelling-house is in the condition aforesaid, shall represent the same to the local authority, but the absence of any such complaint shall not excuse him from inspecting any dwelling-house and making a representation thereon to the local authority."

Sect. 38.â (1.) " If a medical officer of health finds that any building within his district, although not in itself unfit for human habitation, is so situate that by reason



of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,â

"(a.) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or

"(b.) It prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings; in any such case, the medical officer of health shall represent to the local authority the particulars relating to such first mentioned building (in this Act referred to as 'an obstructive building') stating that in his opinion it is expedient that the obstructive building should be pulled down.

(2.) "Any four or more inhabitant householders of a district may make to the local authority of the district a representation as respects any building to the like effect as that of the medical officer under this section."

For the purposes of Part II. of the Act, the expressions "local authority" and "district" mean, except as regards London, sanitary authority and sanitary district respectively; 2 the expression "street" includes any court, alley, street, square, or row of houses; and the expression "dwelling-house" means any inhabited building, and includes any yard, garden, outhouses, and appurtenances belonging thereto or (0 53 54 Vict. c. 70. (2) lb. s. 92, and 1st Schedule.

56 57 Vict, usually enjoyed therewith, and includes the site of the dwelling- c. 73, s. 6, n. house as so defined." 1

The Small Holdings Act, 1892. This Act 2 empowers county councils to acquire land for the purpose of selling or letting it as small holdings for agricultural purposes. Sect. 16 of the Act enables a county council, where they have provided small holdings, to delegate certain of their powers in relation thereto to a committee, of which, except in the case of small holdings within a municipal borough, two allotment managers or persons appointed as allotment managers are to be members.

Transfer of Sect. 7.â (1.) As from the appointed day, in every powers rural parish the parish meeting shall, exclusively, have u J de j lve the power of adopting any of the following Acts, inclusive Acts. of any Acts amending the same (all which Acts are in this Act referred to as "the adoptive Acts"); namely,â 34 vm.4c.9o. (a.) The Lighting and Watching Act, 1833; Â 2â cx: (â ) The Baths and Washhouses Acts, 1846 to 1882; lsievictciss! ( c ) The Burial Acts, 1852 to 1885; 2324vÂ ' . c.3o! (d-) The Public Improvements Act, 1860; 55!5cvict. c.53. (e.) The Public Libraries Act, 1892.

(2.) Where under any of the said Acts a particular majority is required for the adoption or abandonment of the Act, or for any matter under such Act, the like majority of the parish meeting or, if a poll is taken, of the parochial electors, shall be required, and where under any of the said Acts the opinion of the voters is to be ascertained by voting papers, the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by this Act.

(3.) Where under any of the said Acts the consent or approval of, or other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the

parish meeting shall be substituted for the vestry, and for this purpose the expression " vestry" shall include any meeting of ratepayers or voters.

(4.) Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part.

(5.) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.

(1) 53 54 Vict- c- 7 Â s- 2 9 ( 2 ) 55 5 6 Vict. c. 31.

I. Powers and Duties of Parish Councils and Meetings. 63 (6.) This Act shall not alter the incidence of charge of 5 6 57 Vict, any rate levied to defray expenses incurred under any of c 73 ' s 7 ' the adoptive Acts, and any such rate shall be made and charged as heretofore, and any property applicable to the payment of such expenses shall continue to be so applicable.

(7.) When any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act.

(8.) For the purposes of this Act the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts.

Note. The adoptive Acts. â The present section, it will be observed, transfers the functions of an existing authority under any of the adoptive Acts to the parish council, only where the area over which the authority has jurisdiction is co-extensive with a rural parish. Cases in which on the appointed day any of the adoptive Acts is in force for an area not co-extensive with a rural parish are provided for by sect. 53, which also enables the county council to alter the boundaries of any such area. Certain provisions as to the adoption and execution of the adoptive Acts in urban districts are contained in sect. 62.

With regard to a transfer of powers, duties and liabilities effected by the present Act generally, see the note to sect. 6, ante, p. 28.

As to the " appointed day," see sect. 84, (4). Provisions as to the borrowing of money for the purposes of any of the adoptive Acts by a parish council acting in the execution of such Acts are contained in sect. 12.

As to the holding of a parish meeting for part of a rural parish, see sect. 49.

Under the first schedule, part I. (3), the notice to be given of a parish meeting held to consider the adoption of any of the adoptive Acts is to be longer than is required in ordinary cases.

Authorities acting in the execution of the adoptive Acts are in every case authorised by the Act or group of Acts under which they act to acquire land. It seems, therefore, though the point is not perhaps free from doubt, that an order might be made under sect. 9, post, enabling land required by a parish council for the purposes of any of the adoptive Acts in the execution of which they may be acting to be acquired compulsorily.

A brief account of the several adoptive Acts, with some further observations on the provisions of the present Act relating to such Acts, is subjoined.

56 57 Vict. The Lighting and Watching Act, 1833.â This Act, 1 contains c. 73, s. 7, n. two sets of provisions, relating respectively to lighting and to watching. It may be adopted as a whole, or the provisions as to either lighting or watching may be adopted separately. 2 With the exception, however, of one section, 3 which enables the authority under the Act to provide and keep up fire engines, the provisions with regard to watching, which provided for the establishment of a sort of local police force, are obsolete. The provisions as to lighting, also, are superseded within urban sanitary districts. 4 Hitherto the Act has, when adopted, been carried out by a body of inspectors elected by the ratepayers. 5

The Act authorises the adoption of its provisions for any " parish." 6 The expression " parish" is not, strictly speaking, defined, but it is provided 7 that " the powers given to watch and light any parish shall be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct, and chapelry, or parts within the same; and where the word ' parish' is used, it shall be understood to extend to parts within the same; and the powers given to a churchwarden shall be understood to be given to any chapelwarden, overseer, or other person usually calling any meeting on parochial business." Provision is also made for the adoption of the Act for part of a parish; 8 and the authorities of two or more parishes for which the Act has been adopted are enabled to unite for carrying out its purposes. 9

The Act enables a meeting of the ratepayers of a parish convened and held in a specified manner to determine, by a two-thirds majority of the ratepayers present, to adopt the provisions of the Act for the parish, and requires the meeting, if it has been decided to adopt the provisions of the Act, to determine further, the number of inspectors to be appointed to carry the Act into effect, and the sum that the inspectors shall have power to raise for the purpose in the ensuing year; provision is, however, made for taking a poll by means of voting papers with regard to the adoption of the Act, and the other questions above-mentioned, upon the demand of a certain number of ratepayers. For the adoption of the Act where a poll is taken a two-thirds majority of those voting is required, and the number voting must be a clear majority of the ratepayers of the parish. 1 " If the adoption of the Act is not (1) 3 4 Will. IV. c. 90. inspectors, ss. 22, 23.

(4) Public Health Act, 1875 (38 (8) lb. s. 73. 39 Vict. c. 55), s. 163. (9) lb. s. 61.

(5) 3 4 Will. IV. c. 90, ss. 17 (10) lb. ss. 5-15, and see the 21; and see s. 14, and, as to the Parish Notices Act, 1837 (7 Will, meetings and proceedings of the IV. 1 Vict. c. 45).

determined upon, another meeting to consider the question is 56 57 Vict. not to be called within a year. 1 c- 73. s- 7, n.

The Act provides that, where its provisions are in operation, a meeting of ratepayers, similar to that held for determining upon the adoption of the Act, shall be held annually for the purposes of receiving the inspectors' accounts and determining the sum they shall have power to raise for the year; 2 and that, at such meeting, one-third of the inspectors shall retire, new inspectors being elected in their place. 3 A similar meeting of ratepayers is also empowered after the Act has been in force for a certain time to abandon it. 4



It is most difficult to understand the effect of the present Act as regards the functions of a meeting of ratepayers under the Lighting and Watching Act. The powers of such a meeting, whether held for the whole or part of a rural parish, to adopt the Act are clearly superseded by the powers conferred on a parish meeting for the whole or part of the parish, as the case may be, under sub-sect. (1) or sub-sect (4). And the functions of such a meeting for the whole of a rural parish as to the determination of the sum to be spent in the execution of the Act, c, are also clearly transferred to the parish meeting by sub-sect. (3). On the other hand, there is no positive provision transferring any of the powers of such a meeting held for part of a parish, except that of adopting the Act, to a parish meeting. Nor is there any positive provision transferring any powers of such a meeting held for a whole parish, except the power of adopting the Act and powers relating to any expense or rate. Thus there is nothing positive to take from such a meeting the power of abandoning the Act, or of electing the inspectors, where, owing to there being no parish council, such an election remains necessary. Yet in sub-sect. (2) it is clearly assumed that the power of such a meeting to abandon the Act is transferred to the parish meeting; and it seems also to be assumed that other powers of persons entitled to vote upon questions arising with regard to the adoptive Acts, besides those dealt with in sub-sect. (3), are so transferred.

The following is a brief summary of the provisions of the Act relating to the powers and duties of the inspectors, and to miscellaneous matters, omitting the obsolete provisions as to watching:â

The inspectors may appoint and pay a treasurer and other officers, and may hire an office for the transaction of business; 5 and they are to take security from the treasurer for the due execution of his office. 6 Provision is made for the accountability of the treasurer and other officers, 7 and for preventing their taking reward, other than their proper wages c, for (1) 3 4 Will. IV. c. 90, s. 16. (4) H. s. 15.

(2) lb. ss. 9, 18-20. (5) lb. s. 24; and see s. 26.

(3) Â. s. 19; as to the election (6) lb. s. 25.

of inspectors, see also ss. 17, 21. (7) lb. ss. 26, 27.

56 57 Vict, anything done under the Act, or being interested in any

Ci 73 s. 7, n. contract with the inspectors. 1 The inspectors are required to keep minutes of their proceedings and proper accounts, 2 and their accounts are to be laid before the annual meeting of the ratepayers. 3

For the purpose of raising the sum that they are, by the meeting of ratepayers, empowered to raise to meet their expenses, the inspectors may make an order on the overseers or other persons levying the poor rate, 4 who are then to make and levy a rate, for the purpose of collecting, raising, and levying which, they are to proceed in the same manner and to have the same powers, remedies, and privileges as for levying the poor rate, except that " houses, buildings, and property other than land " are to be rated at a rate in the pound three times greater than that at which land is to be rated. 5 The last valuation acted upon for the poor rate is to be acted upon in assessing this rate; 6 but provision is made for dealing with cases where houses, buildings, or other property, and land are not separately valued for the purpose of the poor rate. 7 Powers are given to the overseers to levy rates made by their predecessors, 8 and provision is made for the payment of the sum required to the treasurer of the inspectors, 9 and for

recovery of the sums called for from the overseers in the event of their failing to pay the same. 10

The inspectors are empowered to light, or contract for the lighting of, the roads, streets and places in their district, 11 and provisions are made as to the laying of gas pipes and pipes for the discharge of waste liquids arising from the manufacture of gas, as to the stoppage of the escape of gas, as to the prevention of the contamination of water by gas, 12 and as to the protection of the lamps, c.; from wilful or accidental injury. 13

The inspectors are empowered to purchase or hire land for the purposes of the Act, 14 but they have no borrowing powers. 15

The Act contains a number of provisions relating to legal proceedings, 16 among which may be noticed a section, 17 which expressly provides that the Act is not to protect the inspectors (1) 3 4 Will. IV. c. 90, s. 28. (14) lb. s. 59. As to the acquisition of land by a parish council for (3) lb. s. 19. the purposes of the Act, see, ante, (5) lb. s. 33; and see, as to an (15) Whether a parish council, appeal against such a rate, s. 67. acting in the execution of the Act, (6) lb. s. 33. could borrow money for the purposes (7) lb. s. 34. of the Act seems doubtful. See (8) lb. s. 35. sect. 12, and the note to that section, (9) lb. s. 36. post.

(10) lb. s. 38. (16) 3 4 Will. IV. c. 90, ss. 29, (n) lb. ss. 45, 57. 54, 58, 60, 63-68, 70.

(12) lb. ss. 46-53. (17) lb. s. 54.

(13) lb. ss. 55, 56.

or their contractors from indictment or action in respect of any 56 57 Vict, nuisance or injury arising from their works, c, and a section 1 c- 73Â s- 7 n-giving an appeal to quarter sessions against, biter alia, any order, direction, or appointment of the inspectors.

Lastly, the Act contains a saving with regard to the Metropolitan Police Act, 1829, 2 and local Acts, and certain provisions in favour of commissioners of sewers and the Universities of Oxford and Cambridge. 3

The Baths and Wash-houses Acts, 1846 to 1882.â This collective title includes four Acts, 4 passed respectively in 1846, 1847, 1878, and 1882, each of which may be cited as the " Baths and Wash-houses Act" with the addition of the year in which it was passed. 5

The Acts may be adopted for any urban sanitary district, and when adopted carried into execution, by the sanitary authority. 6 They may also be adopted for any parish not in an urban sanitary district; 7 the expression " parish" being defined as meaning "not only every place having separate overseers of the poor and separately maintaining its own poor, but also every place maintaining its own poor and having a vestry;" 8 and neighbouring parishes for which the Acts have been adopted are enabled to concur in carrying their provisions into effect. 9

Hitherto, the vestry, with the consent of the Local Government Board, have had the power, by a two-thirds majority, of adopting the Acts for a parish; 10 and a board of commissioners elected by the vestry have been the authority for their execution in a parish where they have been adopted. 11

The following is a brief summary of the principal powers and duties of a board of commissioners appointed under the Acts:—

They may provide, fit up and maintain public baths, public wash-houses, open bathing places, and covered swimming baths; and may close a swimming bath provided by them during five winter months, and either keep it closed, or establish a gymnasium in it, or make use of it, or allow it to be made use of, for certain other purposes. 12 They have (1) 3 4 Will. IV. c. 90, s. 66. 1875, see the following repealed (2) 10 Geo. IV. c. 44. enactments: 21 22 Vict. c. 98, (3) 3 4 Will. IV. c. 90, ss. 72, s. 47; 29 30 Vict. c. 90, s. 43; 74-76. 35 36 Vict. c. 79, s. 7.

(4) 9 10 Vict. c. 74; 10 11 Vict. c. 74, s. 1. Vict. c. 61; 41 42 Vict. c. 14; (8) 10 n Vict. c. 61, s. 2. and 45 46 Vict. c. 30. (9) 9 10 Vict. c. 74, s. 19.

(5) Short Titles Act, 1892 (55 (10) lb. ss. 1, 5; Local Govern-Vict. c. 10). ment Board Act, 1871 (34 35 Vict.

(6) 9 10 Vict. c. 74, s. 1; Public c. 70), s. 2.

Health Act, 1875 (38 39 Vict. (11) As to the election, constitu-c. 55), s. 10; 41 Vict. c. 14, s. 2; tion, c. of the commissioners, see as to the adoption and execution of 9 10 Vict. c. 74, ss. 6-11, 20. the Acts in such districts before the (12) 9 10 Vict. c. 74, ss. 25, passing of the Public Health Act, 27; 41 Vict. c. 14, ss. 3-.

56 57 Vict. powers for the appropriation, purchase or hiring of land, 1 and 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73. c-7) n' may erect the necessary structures and provide the necessary fittings and furniture; 2 or they may purchase or hire existing baths, c. and, if they think fit, add to or alter them. 3 They have the general management and control of the baths, c., 4 and may make charges for the use of the same; but the Acts in most cases impose a limit on the amount of such charges. 5 Their expenses, so far as they are not met out of the income derived from the baths, c. are to be paid, to such amount as may be fixed by the vestry, out of the poor rate by the overseers, who under order of the vestry are to pay such amount to a person appointed by the commissioners to receive the same. 6 The commissioners have borrowing powers, 7 and the Public Works Loan Commissioners are authorised to advance them money. 8 The commissioners may hire an office and may appoint and pay officers and servants, the approval of the vestry being, however, necessary to authorise the remuneration of such officers and servants in most cases; 9 and provision is made as to the accountability of the commissioners' officers, and as to security to be taken for the faithful execution of their duties in certain cases. 10 They have power with the approval of the Local Government Board to make bye-laws, 11 and are to keep minutes of their proceedings, and proper accounts which are to be audited by auditors appointed by the vestry. 12

The Acts further impose penalties on commissioners and their officers for being interested in contracts with the commissioners, c.; 13 empower water companies, gas companies, and other bodies to supply the commissioners with water or gas gratuitously or on favourable terms; 14 empower trustees of public baths, c. to transfer the same to the commissioners under certain circumstances; 15 give an appeal to quarter sessions against any bye-law, order, direction, or appointment of or by the commissioners; 16 and contain provisions as to the (1) 9 10 Vict. c. 74, s. 24; 10 of a parish council to borrow for csc 11 Vict. c. 61, s. 4; 45 46 the purposes of the Acts, see sect. 12, Vict. c. 30, s. 3. As to the acqui and the note to that section, post. sition



of land by a parish council for (8) 9 10 Vict. c. 74, s. 22; the purposes of the Acts, see ante, Public Works Loans Act, 1875 p. 63. (38 39 Vict. c. 89), s. 9 and (2) 9 10 Vict. c. 74, s. 25. 1st Schedule.

(3) lb. s. 27; 45 46 Vict. c. 30, (9) 9 10 Vict. c. 74, s. 12 s. 2. 41 Vict. c. 14, s. 7.

(4) 9 10 Vict. c. 74, s. 33. (10) 9 10 Vict. c. 74, s. 23.

(5) 10 11 Vict. c. 61, s. 7; 41 (11) lb. ss. 23, 34, 35; Local Vict. c. 14, ss. 4, 8, 14. Government Board Act, 1871 (34 (6) 9 10 Vict. c. 74, ss. 16-18; 35 Vict. c. 70), s. 2; 41 Vict. 41 Vict. c. 14, s. 13. c. 14, s. 6.

(7) 9 10 Vict. c. 74, ss. 21, (12) 9 10 Vict. c. 74, ss. 13-15. 23; Public Health Act, 1872 (35 (13) lb. s. 39. 36 Vict. c. 79), s. 34, re-enacted (14) lb. s. 28. by the Public Health Act, 1875 (15) lb. s. 27. (38 & 39 Vict. c. 55), s. 343; 41 (16) lb. s. 30. Vict. c. 14, s. 9. As to the powers disposal of surplus funds in the commissioners' hands, 1 as to 56 57 Vict contracts entered into by the commissioners, 2 as to the pro- c- 73. s- 7. n-tection of the commissioners from personal liability, 3 as to the sale and exchange of lands, 4 as to the sale of baths, c, that prove unnecessary or too expensive, 5 as to the recovery of charges made for the use of the baths, c., 6 as to the preservation of decency and order in the baths, c., 7 as to the recovery of penalties and damages not specially provided for, 8 as to the proportion between the number of baths, washing-tubs, or troughs for the labouring classes and those of any higher class 9, and as to the validity of acts done notwithstanding informalities. 10

The Burial Acts, 1852 to 1885.â This collective title 11 includes twelve Acts. The first nine of these, 12 passed respectively in 1852, 1853, 1854, 1855, 1857, 1859, 1860, 1862, and 1871, may each be cited as "the Burial Act," with the addition of the year in which it was passed. The remaining three Acts are: the Burial Laws Amendment Act, 1880, 13 the Burial and Registration Acts (Doubts Removal) Act, 1881, 14 and the Burial Boards (Contested Elections) Act, 1885. 15

The Burial Act, 185 2, 16 applied originally only to the Metropolis, but most of its provisions were made applicable elsewhere by the Burial Act, 1853. n The enactments still relating solely to the Metropolis are not referred to in the following account of the Acts.

The Acts of 1880 and 1881 were passed to authorise burials in consecrated ground without the rites of the established church and burials with such rites in unconsecrated ground. Their provisions call for no more than incidental mention here.

The main objects of the remaining Acts are to enable burials in undesirable places to be prohibited and new burial grounds to be provided.

With the first of these objects the Acts enable an Order in Council to be made, upon the representation of a Secretary of State, 18 prohibiting the opening of any new burial ground in any city or town, or within any other limits, without the approval â of a Secretary of State; or ordering the discontinuance of burials within given limits, or in given burial grounds, either (1) 9 10 Vict. c. 74, s. 18. (12) 15 16 Vict. c. S5; 16 2) lb. s. 26. 17 Vict. c. 134; 17 18 Vict.

(3) lb. s. 29. c. 87; 18 19 Vict. c. 128; 20 4) lb. s. 31. 21 Vict. c. 81; 22 Vict. c. 1; 23 (5) lb. s. 32. 24 Vict. c. 64; 25 26 Vict.

(6) lb. s. 38. c. 100; and 34 35 Vict. c. 33.

(7) 41 Vict. c. 14, ss. 10, 11. (13) 43 44 Vict. c. 41.

(8) 9 10 Vict. c. 74, ss. 23, 40. (14) 44; 45 Vict. c. 2.

(9) lb. s. 36; 10 11 Vict. (15) 48 49 Vict. c. 21. c. 61, s. 5. (16) 15 16 Vict. c. 85. o) 10 11 Vict. c. 61, s. 3. (17) 16 17 Vict. c. 134, s. 7.

(11) Short Titles Act, 1892 (55 (18) The working of the Acts is Vict. c. 10). superintended by the Home Office.

56 57 Vict. absolutely or subject to any exception or qualification. 1 c 73. s. 7, n. Certain places of burial are, however, partially or wholly exempted from the operation of such an Order. 2 They also enable an Order in Council to be made for the purpose of preventing vaults and places of burial from becoming dangerous to health. 3

The enactments relating to the provision of a burial ground for places within urban sanitary districts are dealt with in the note to sect. 62. In other places, the first steps towards the provision of a burial ground for any area have hitherto been the passing of a resolution by the vestry, or meeting in the nature of a vestry, that a burial ground be provided, and the appointment of a " burial board " for the area to give effect to the resolution. The passing of such a resolution, it is to be observed, is under the present section of the Local Government Act, 1894, to be regarded as the adoption of the Burial Acts.

The provisions of the Acts as to the areas for which burial boards may be established are complex and not free from obscurity.

In the first place, under the Burial Act, 1852, a burial board may be established for any "parish," that expression being defined as meaning, unless there should be " something in the subject or context repugnant to such construction," "every place having separate overseers of the poor, and separately maintaining its own poor." i It was held under this Act that the definition did not prevent the establishment of a burial board for an ancient ecclesiastical parish that had not separate overseers and did not separately maintain its poor. 5 In that case, however, it was not pointed out to the Court that a burial board appointed for any area other than a poor law parish, would not, under the Burial Act, 1852, have had any means of obtaining funds, and the decision has on that ground been doubted. 6

The Burial Act, 1855, provides that "where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places" a burial board may be established for the several (1) 16 17 Vict. c. 134, ss. 1, S. C. turn. Reg. v. St. Peter, c., 3, 6; 18 19 Vict. c. 128, ss. 1, 2. burial board) 27 L. J. Q. B. 232 (2) 16 17 Vict. c. 134, ss. 2, 4 Jur. (N. s ) 948.

a, 5. (6) Reg. v. Walcot overseers) (3) 20 21 Vict. c. Si, s. 23; (1862), 2 B. S. 555; 31 L. J. and see 22 Vict. c. I, s. 1. M. C. 217; 6 L. T. 320; 10 W. R.

(4) IS 16 Vict. c. 85, ss. 10, 599; see also Reg. v. Wright 52. (1861), 8 Jur. (x. s.) 260; 5 L. T.

(5) Reg. v. Sudbury burial 345; 10 W. R. 86. board) (1858), E. B. E. 264; parishes or places. 1 The same Act also enables a burial 56 57 Vict. board to be established for any parish, township, or other c- 73 s. 7 n-district not separately maintaining its own poor, which had before the passing of that Act a separate burial ground. 2 It was

held that the last-mentioned enactment, where a burial board had been established for an ecclesiastical parish forming part of a poor law parish, impliedly authorised the establishment of a burial board for the residue of the poor law parish. 3 It was held also that the enactment did not authorise the establishment of a burial board for an area forming part of a larger area for which a burial board had already been established; and the Court distinguished the second *Walcol* case referred to below, 4 on the ground that the enactment under consideration contains no provisions similar to those in sect. 5 of the Burial Act, 1857, providing for the cesser of the powers of an existing burial board. 5

The Burial Act, 1857, enables a burial board to be established for "any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground;" and provides that, upon the establishment of a burial board for such an area, "the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district." 6 Under this enactment it was held that a burial board might be established for a new parish forming a portion of a poor law parish though a burial board had been already established for the whole poor law parish. 7 Probably the word district in this enactment is used as meaning only some area of similar nature to a parish or township, and not as including any area whatsoever. A former Home Secretary is known, it may be mentioned, to have acted on this view of the meaning of the term. The same Act renders the approval of the Secretary of State necessary to the establishment of a burial board for united parishes or places under the Act of 1855, where any of the several parishes or places separately maintains its own poor or has a separate burial ground, and enables the Secretary of State to direct that any such parish or place shall be excepted; in which case a burial board may be established for the remaining parishes and places. 8

The Burial Act, 1860, 9 renders the approval of the Secretary of State necessary to the establishment of a burial (1) 18 19 Vict. c. 128, s. 11. *Q. B.* 595; 49 *L. T.* 170; 31 *W. R.*

(2) *lb.* s. 12. 922; *C. nom. Reg.-v. Tunbridge*, (3) *Viner v. Tonbridge church-wardens*, 47 *J. P.* 677.

*wardens, &c.* (1859), 2 *E. E.* (6) 20 21 *Vict. c.* 81, s. 5.

9; 28 *L. J. M. C.* 25; *S. C. nam.* (7) *Reg. v. Walcot, St. Swithin*

*Viner v. Tunbridge*, 5 *Jur. (N. s.) overseers* (1862), 2 *B. S.* 571; 1293. 31 *L. J. M. C.* 221; 6 *L. T.* 325; (4) *Reg. v. Walcot, St. Swithin*, 10 *W. R.* 602.

*infra.* (8) 20 21 *Vict. c.* 81, s. 9.

(5) *Reg. v. Jonbridge (overseers)* (9) 23 24 *Vict. c.* 64, s. 4. (1883), 11 *Q. B. D.* 134; 52 *L. J.*

56 57 *Vict.* board for any parish or place where such parish or place has c 73. s. 7, n, been divided into parts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground.

Lastly, the Burial Act, 1871, 1 regulates the manner in which the consent of the Secretary of State to the establishment of a burial board is to be obtained. 2

As to the cases in which a vestry meeting, or meeting in the nature of a vestry, is required to be held for the purpose of determining whether a burial ground is to be



provided and as to the cases in which the consent of a Secretary of State is necessary, the following extract from directions issued by the Home Office may be usefully quoted 3:â 1. " A meeting of the vestry or in the nature of a vestry, of a parish (poor law or ecclesiastical), or of a district for which such meetings have been accustomed to be held, is required by law to be convened by the churchwardens, or other persons to whom it belongs to convene such meetings, to consider whether a burial ground shall be provided under the Burials Act for such parish or district, on the following occasions: Burial Act, 1852, s. 10.

(a.) " Upon the requisition in writing of ten or more ratepayers of any parish in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health. 1b.

(b.) " Where notice is given of the intention of the Secretary of State to represent to Her Majesty in Council that burials should be discontinued wholly or in part in any burial ground in the parish. Burial Act, 1852, s. 3.

"Also the same authorised persons may also convene a vestry at any time at their discretion to determine the same question." 4 lb.

2. " Public notice must be given of such vestry meeting, and the place and hour of holding the same, and the special purposes thereof in the usual manner, in which notices of the meeting of the vestry are given, at least seven days before holding the vestry." Burial Act, 1852, s. 10.

3. " If the vestry propose to adopt the Burials Acts they should pass a resolution in the following terms:â

" That a burial ground under the Burials Acts shall be provided for the parish of."

(1) 34 35 Vict. c. 33, s. 1. Vict. c. 128, s. II, or for a parish, (2) As to this, see the extracts new parish, township, or other from the directions issued by the district under the 18 19 Vict. Home Office, infra. c. 128, s. 12, and the 20 21 Vict.

(3) The references in square c. 81, s. 5. The Acts are silent as brackets are taken from the mar to the circumstances under which ginal notes to these directions. vestry meetings, or meetings in the (4) This paragraph, it will be nature of vestry meetings, are to be observed, does not refer to the convened for determining whether provision of a burial ground for a burial ground shall be provided united parishes under the is 19 under these enactments.

4 "A copy of such resolution, extracted from the minutes of 56 57 Vict, the vestry and signed by the chairman, must be sent to the c- 73 s- 7, Â Â Secretary of State." Â.

5. " If such resolution be passed and a copy sent as above described, the vestry may proceed to appoint a burial board, without further reference to the Secretary of State, except in the following cases:â (1.) "Where a parish or place has been united with any other parish or place, parishes or places for all or any ecclesiastical purposes, " i or (2.) " Where two or more parishes or places have heretofore had a church or a burial ground for their joint use, "or (3.) " Where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, then,â notwithstanding that by 18 19 Vict. c. 128, s. n, power is given to the vestry or meeting in the nature of a vestry of such several parishes or places (and whether any one or more of them do or do not separately maintain its

own poor) to appoint a Burial Board and exercise the powers therein referred to as are vested in the vestry of a parish or place separately maintaining its own poor,â nevertheless, if any of the several parishes or placesâ (a.) " ' separately maintains its own poor, or (b.) " ' has a separate burial ground," it shall not be lawful for the vestry or meeting in the nature of a vestry of such several parishes or places to appoint a burial board under 18 19 Vict. c. 128, s. n without the approval of one of Her Majesty's Principal Secretaries of State." Burial Act, 1852, s. n; Burial Act, 1857, s. 9. (4.) "Alsoâ

" Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of Her Majesty's Principal Secretaries of State." Burial Act, 1860, s. 4.

6. " In any case where the approval of the Secretary of State is necessary it shall be applied for as follows. After the vestry have passed the resolution already described of their intention to provide such burial ground, and before they take any further proceedings, they must pass a resolution in the following terms:â

" That it is expedient that a burial board shall be appointed under the Burials Acts for the parish (or district) of , which includes the parishes or portions of the 56 57 Vict. parishes of, and of, each of which has a c- 73 s- 7 n separate burial ground or is separately rated to the poor." And submit such resolution to the Secretary of State for his approval." Burial Act, 1857, s. 9; Burial Act, 1871, 7. "When making application for such approval it should be stated in what manner the ratepayers in each and all of the districts to be affected have been informed of what is proposed, and whether or not there is any opposition, and, if there be, by whom and for what alleged reasons."

8. " If the Secretary of State decides to approve of such resolution of the vestry, he will signify his approval by letter from the Home Office; and on receiving such approval, the vestry will be at liberty to elect the members of the burial board as in the first instance."

9. " If, however, it appear to the Secretary of State that any of such parishes or places has a sufficient burial ground, or that otherwise it would not be expedient that the powers should be exercised in relation to such parish or place, the Secretary of State may direct that such parish or place shall be excepted; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry from time to time, and in such vestry or meeting may proceed in like manner in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted." Burial Act, 1857, s. 9.

When the necessary resolutions have been passed, and the consent of the Secretary of State if required had been obtained, a burial board is to be elected by the vestry. 1 The vestries of any parishes which have respectively resolved to provide burial grounds may concur in providing one burial ground for the common use of the parishes upon terms to be agreed upon, and in that case the burial boards appointed for the respective parishes are to act as a joint burial board for the parishes. 2 The proceedings of a burial board as will be seen are to a large extent subject to the control of the vestry,

and it is provided that, where a joint burial board is constituted for more than two parishes, all acts authorised to be done with the approval of the vestry may be done with the approval of the vestries of the majority of such parishes. 3

The provisions of the present Act, as regards cases where the Burial Acts have been, or may hereafter, be adopted for the whole of a single rural parish, appear to have the following effect:â

If the parish has a parish council, that council will act as (1) As to the election, proceed c. 128, s. 4; 4S 49 Vict. c. 21. j ings and constitution of a burial (2) 15 16 Vict. c. 85, s. 23.

board, see 15 16 Vict. c. 85, (3) 20 21 Vict. c. 81, s. 1.

ss. 11, 13, 14, 24; 18 19 Vict.

the authority in the execution of the Acts; the parish meeting 56 57 Vict.

will have such of the functions of the vestry under the Acts as c- 73Â s- 7. n- are mentioned in sub-sect. (3) of the present section; and the parish council, under sect. 6 (1, a), or, subject to the provisions of the grouping order, the parish meeting, under sect. 19, if the parish is grouped, will have the remaining functions of the vestry, except such as concern affairs of the church.

If the parish has not a parish council, the parish meeting will, under sect. 19, have all the powers civil of the vestry, including the power of electing a burial-board.

There appears to be no general provision in the present Act to transfer to a parish meeting or parish council the functions, under the Burial Acts, of the vestry of an area for which the Acts have been or may be adopted and which is not coextensive with a rural parish. And it seems doubtful whether after the appointed day the Burial Acts could be adopted for an area extending into two or more rural parishes.

The following is a brief summary of such of the provisions of the Burial Acts as have not been already referred to, so far as they relate to rural parishes:â

A burial-board are either to provide a burial-ground, or with the approval of a Secretary of State two or more burial-grounds, for the area for which they act; 1 or they may contract with any company or persons entitled to any cemetery or cemeteries for the interment therein of the bodies of persons who would have had rights of interment in the burial-grounds of the area for which the board act. 2

No ground not already, at the passing of the Burial Act, 1855, used as or appropriated for a cemetery is to be used for burials under the Burial Acts within the distance of one hundred yards from any dwelling-house without the consent in writing of the owner, lessee, and occupier of the same. 3

Where the board provide a burial-ground it is to be divided into consecrated and unconsecrated parts in such proportions as may be sanctioned by a Secretary of State; and the unconsecrated part is to be allotted in such manner and in such portions as he may sanction; 4 or, where the board provide more than one burial-ground, they may with the approval of the Secretary of State provide separate and distinct grounds to be used respectively as consecrated and unconsecrated grounds. 5 Provision is however made enabling a new burial-ground provided for a parish under the Burial Acts to be conveyed and settled, in pursuance of a unanimous resolution of the vestry, so as to be held in like manner as the old burial-ground or churchyard of the parish; in which case it is not necessary (1) 15 16 Vict. c. 85, s. 25; 16 17 Vict. c. 134, s. 7; 20 20 21



Vict. c. 81, s. 3. 21 Vict. c. 81, s. 12; and see, as (2) 15 16 Vict. c. 85, s. 26. to the division between the conse- (3) 18 19 Vict. c. 128, s. 9; crated and unconsecrated portions, and see 17 18 Vict. c. 87, s. 12. 20 21 Vict. c. 8i, s. n.

(4) 15 16 Vict. c. 85, s. 30; (s) 20 21 Vict. c. 81, s. 3.

5-6 57 Vict, to set apart an unconsecrated portion of the ground; but at â 73 s- 7) n. any time within ten years thereafter an unconsecrated ground may be provided for the parish. 1 The consecrated part of the burial-ground is to be deemed the burial-ground of the area for which it is provided and the parishioners and inhabitants of the area are to have rights of sepulture therein accordingly. 2

The general management and control of the ground is vested in the burial-board, but questions as to the fitness of any monumental inscription in the consecrated part of the ground are reserved to the bishop. 3 The board are empowered to sell exclusive rights of burial, rights to construct vaults, and rights to place monuments, gravestones, c, in the burial-ground. 4 They may, subject to the approval of the Secretary of State, determine, and, with the like approval and the consent of the vestry, from time to time revise, the fees payable to the board in respect of the rights above referred to and in respect of ordinary interments in the burial-ground. 5 They may provide a chapel for the performance of the burial service according to the rites of the established church, and, if they provide such a chapel, they are required, unless the Secretary of State, upon a representation of a majority of not less than three-fourths of the vestry, declare it unnecessary, to provide also such chapel accommodation for the performance of burial service by persons not being members of the established church as may be approved by the Secretary of State. 6 Provisions are however made enabling separate burial-boards that have provided separate burial-grounds which adjoin each other to contract with each other for the provision of chapel accommodation in common. 7

The board are empowered, with the consent of the vestry, which consent may however be dispensed with by warrant of the Secretary of State in certain cases, for the purpose of providing a burial-ground, to purchase land in order to form a burial-ground, or to purchase an existing cemetery. 8 They are also empowered with the consent of the vestry, and of certain other bodies, to appropriate parish land for the purpose. 9 Provision is also made enabling, in certain cases, a burial-ground provided under the Church Building Acts to be transferred to the burial-board, and enabling the board, with the approval of the vestry, to enlarge such ground by the addition of unconsecrated ground. 10 The board have also power, with the approval of the vestry, to purchase a closed (1) 18 19 Vict. c. 128, s. 10. (7) 18 19 Vict. c. 128, s. 16.

(2) 15 16 Vict. c. 85, s. 32. (8) 15 16 Vict. c. 85, ss. 26, (3) lb. s. 38. 27; 18 19 Vict. c. 128, s. 6.

(4) lb. s. 33. With regard to the acquisition of (5) lb. s. 34; 18 19 Vict. c. 128, land by a parish council for the s. 7 5 20 21 Vict. c. 81, s. 17. purposes of any of the adoptive (6) 15 16 Vict. c. 85, s. 30; Acts, see ante, p. 63.

16 17 Vict. c. 134, s. 7; is 19 (9) 15 16 Vict. c. 85, s. 29.

Vict. c. 128, s. 14. (10) 20 21 Vict. c. 81, s. 7.

cemetery in certain cases for the purpose of appropriating or 56 57 Vic, erecting buildings or for making approaches to the burial- c- 73. s- 7 "â ground. 1 The board have also power with the consent of the vestry to sell superfluous lands purchased by

them in which no burial has taken place, 2 and, with the sanction of the Secretary of State, to let land vested in them which has not been consecrated and in which no interment has taken place. 3

The board may make arrangements for facilitating the conveyance of the bodies of the dead to burial-grounds, 4 and, with the approval of the vestry, which approval may however be dispensed with in certain cases, may provide mortuaries. 5

The expenses of the board, so far as they are not met out of income, are to be defrayed out of the poor rate, and the board are empowered accordingly to obtain contributions from the overseers. Where it is necessary to levy a contribution on part only of a parish, the overseers for the parish are to make an addition to the poor rate, or to levy a separate rate in the nature of a poor rate in that part. 6 The expenses the board incur in providing and laying out a burial-ground and in building chapels are not to exceed such sum as may be authorised by the vestry; but, if the vestry refuse or neglect to authorise the expenditure of the necessary sums for the purpose, the Secretary of State may by warrant authorise the board to expend the necessary amount without authority from the vestry. The other expenditure of the board is not subject to the control of the vestry. 7 The board have borrowing powers, 8 and the Public Works Loan Commissioners are authorised to advance them money; 9 and provision is made as to the disposal of surplus funds in their hands. 10

The board are to appoint a clerk and may appoint other officers and servants; but the remuneration of their clerk, officers, and servants is subject to the approval of the vestry; and the board may hire an office. 11 They are to keep minutes and proper accounts which are to be audited by unpaid auditors appointed by the vestry. 12 They are expressly empowered to enter into contracts, and provisions are made as to the matters to be specified in such contracts and as to certain preliminaries that are to be gone through before the board enter into a contract above the value or sum of "100. 13 (1) 20 21 Vict. c. 81, s. 26. 19 Vict. c. 128, s. 6; 20 21 Vict.

(2) 15 16 Vict. c. 85, s. 28. c. 81, ss. 18-21. As to the powers (3) 18 19 Vict. c. 128, s. 17. of a parish council to borrow for the (4) 15 16 Vict. c. 85, s. 41. purposes of the adoptive Acts, see (5) 15 16 Vict. c. 85, s. 42; sect. 12, and the note to that 18 19 Vict. c. 128, s. 6. section, post.

(6) 15 16 Vict. c. 85, ss. 19, (9) 15 16 Vict. c. 85, s. 21; 22; 18 19 Vict. c. 128, ss. II, Public Works Loans Act, 1875 (38 13. 39 Vict. c. 89), s. 9.

(7) 15 16 Vict. c. 85, s. 19; (10) 15 16 Vict. c. 85, s. 22. 18 19 Vict. c. 128, s. 6. (11) lb. s. 15.

(8) 15 16 Vict. c. 85, s. 20; (12) lb. ss. 1C-1S. 17 lb. Vict. c. 87, ss. 4, 5; 18 (13) lb. s. 31.

56 57 Vict. The Secretary of State is empowered to make regulations-â â 73, s-7, n- as to burial-grounds and mortuaries provided under the Acts and to appoint and authorise a person to inspect any burial-ground or mortuary. 1

The Acts further contain provisions as to the duties of incumbents, parish-clerks, and sextons in relation to interments in burial-grounds provided by burial-boards; 2 as to the fees payable to incumbents, churchwardens, trustees, parish-clerks, and sextons in respect of such interments; 3 as to the protection of such burial-grounds; 4 as to the assessment of such burial-grounds to local rates; 5 as to the registration of burials in

such grounds; 6 as to the care of closed burial-grounds; 7 as to the dissolution of joint burial-boards; 8 as to the validity of acts of a vestry notwithstanding irregularities; 9 as to the consecration of burial-grounds for paupers; 10 as to the regulation of cemeteries provided under local Acts; u as to the exemption of funerals from tolls; 12 as to the disinterment of dead bodies; 13 as to the transfer of a chapel attached to a parish burial-ground which is not within such parish to the parish in which it is situated upon the closing of the burial-ground; u as to the sale or letting of superfluous land by trustees of cemeteries; 15 and as to the provision of mortuaries by overseers where there is no burial-board. 16

The Public Improvements Act, 1860.â This Act 17 may be adopted for any borough or for any parish with a population of five hundred or upwards according to the last Parliamentary enumeration for the time being. 18 The method of adopting the Act and of carrying it into execution is almost exactly the same as in the case of the Baths and Washhouses Acts, except that the borrowing of money is not authorised. 19 Where it is adopted lands may be purchased or leased, or a gift of lands may be accepted, for the purpose of forming a public walk, or exercise or play-ground, and such walks and grounds may be maintained and improved. 20 To meet the expenses of carrying the Act into execution it is provided that it shall be lawful " for the ratepayers in meeting assembled to rate such 1) 15 16 Vict. c. 85, s. 44; 18 19 Vict. c. 128, s. 8.

(2) 15 16 Vict. c. 85, ss. 32, 39; 20 21 Vict. c. 81, ss. 5, 13.

(3) 15 16 Vict. c. 85, ss. 32, 33, 35-37, 50; 20 21 Vict. c. 81, s. 5.

(4) 15 16 Vict. c. 85, s. 40.

(5) 18 19 Vict. c. 128, s. 15.

(6) 16 17 Vict. c. 134, s. 8; 20 21 Vict. c. 81, ss. 15, 16; and see 43 44 Vict. c. 41, ss. 10, 11; 44 Vict. c. 2.

(7) 18 19 Vict. c. 128, s. 18; 20 21 Vict. c. 81, s. 8. As to these provisions, see sect. 6(1 Â ), ante.

parish to a separate rate," not exceeding sixpence in the pound, 56 57 Vict. " to be called the ' parish improvement rate ' ; provided c- 73 s- 7 n- that such rate be agreed to by a majority of a least two-thirds in value J of the ratepayers assembled at such meeting," 2 and that the provisions of the Baths and Washhouses Act, 1846, shall take effect as "the mode of providing the expenses of carrying the Act into execution " ; 3 but that " previous to any such rate being imposed a sum in amount not less than at least one half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation." 4 At the meeting to be held for the purpose of authorising the rate, corporate bodies are entitled to attend and vote by some person deputed for the purpose under their seal. 5

The Public Libraries Act, 1892.â This Act G repealed the earlier Acts relating to public libraries and consolidated their provisions with some amendments, and has itself been amended by the Public Libraries (Amendment) Act, 1893. 7 The Act contains certain sections applicable exclusively to the Metropolis, 8 and it must be understood that the following account of its provisions is not applicable within that area without considerable modification.

The Act may be adopted for any " library district " ; that is to say, for any urban sanitary district, or for any parish not in an urban sanitary district; 9 and is to be



deemed to have been adopted for any library district in which the Acts it repealed 10 were in force immediately before its commencement, that is on the 1st October, 1892. 11 Two or more neighbouring urban sanitary districts or two or more neighbouring parishes for which the Act has been adopted are enabled to combine for carrying its provisions into execution; 12 and provisions are made enabling a parish to be annexed to an adjoining or neighbouring library district for the purposes of the Act. 13

A rate or addition to a rate for the purposes of the Act is not in any case to exceed one penny in the pound in any financial year; and the Act may be adopted subject to a condition cutting down such maximum to a halfpenny or three farthings; but where such a condition is imposed the limit may (1) The words "in value" are without an urban sanitary district repealed by sect. 89 of the present as if the part without the district Act. were a separate parish, is repealed (2) 23 24 Vict. c. 30, ss. 4, 7. by sect. 89 of the present Act, (3) lb. s. 3. being rendered unnecessary by (4) lb. s. 6. sect. 1 (3), which sub-divides any (5) lb. s. 5. such parish for all civil purposes.

(6) 55 56 Vict. c. 53. (10) The Public Libraries (Eng- (7) 56 57 Vict. c. 11. land) Acts. 1855 to 1890.

( 8 ) 55 56 Vict. c. 53, ss. 21-23. ( XI ) 55 56 Vict ' c- 53 ss- 2S (9) lb. s. I. Sub-sect. (3) of this 30.

section, which provided that the (12) lb. s. 9; 56 57 Vict. c. II, Acts should have effect as regards s. 4.

any parish partly within and partly (13) 55 56 Vict. c. 53, s. 10.

56 57 Vict, afterwards be raised from a halfpenny to three farthings, or c. 73, s. 7, n. from either a halfpenny or three farthings to the full penny. 1 For the purpose of deciding in a parish as to the adoption of the Act, as to fixing or raising a limitation on the amount of rate to be levied for the purposes of the Act, and as to certain other questions, the opinion of the " voters" is, upon the requisition of ten or more " voters " in the parish, to be taken by means of voting-papers in the manner prescribed by the Act; the voters being persons on the local government register in respect of property within the library district in question. 2 The decision upon such questions rests with a simple majority of the voters voting, and when the opinion of the voters upon a question as to the adoption of the Act, or as to the limitation of a rate, has been taken, it is not to be taken again within a year. 3 In an urban sanitary district such questions may be decided by a resolution of the sanitary authority passed at a meeting held after notice given in a specified way. 4

Where the Act is adopted it is carried into execution by a " library authority." In an urban sanitary district the sanitary authority, with the addition of representatives of any parish that may have been annexed to the district, are the library authority, 5 but an urban authority acting as library authority may delegate certain of their powers to a committee which need not consist of members of the authority. 6 In a parish for which it has been adopted, the Act provides for the establishment as library authority of a body of commissioners 7 who are in certain respects to be subject to the control of the vestry; and it is provided that for the purposes of the Act " the vestry of a parish shall be any body of persons acting by virtue of any Act of Parliament as or instead of a vestry, and, where there is no such body, shall be the inhabitants of the parish in vestry assembled, but in the latter case the persons registered as county electors

in respect of the occupation of property situate in the parish, and no other persons, shall be members of the vestry." 8 Whether a vestry under this enactment consisting wholly of county electors is a vestry within the meaning of the present Act, so that its functions, other than those referred to in sub-sect. (3) of the present section, are transferred to the parish council or parish meeting, as the case may be, by sect. 6 (1, a) or sect. 19, seems doubtful. The library authority are empowered to provide all or any (0 55 S Vict. c. 53, s. 2; as applies to rural parishes. to the meaning of " financial year," (3) Ib. s. 3.

see ib. s. 27. (4) 56 57 Vict. c. II, S3. 2, 3.

(2) Ib. ss. 3, 27. The first (5) 55 56 Vict. c. 53, ss. 4, 10.

schedule to the Act, which contains (6) Ib. s. 15 (3).

regulations as to the manner in (7) Ib. s. 4; as to the election, which the opinion of the voters is constitution, and proceedings of the to be taken, is repealed by sect. 89 commissioners, see ib. ss. 5-8. of the presentl Act, so far as it (8) Ib. s. 26.

of the following institutions, namely: public libraries, public 56 57 Vict, museums, schools for science, art galleries, and schools for c- 73. s- 7. Â â art. 1 No charge is to be made for admission to a library or museum provided under the Act; nor, in the case of a lending library, for the use thereof by the inhabitants of the district, â but the library authority may grant the use of a lending library to persons not being inhabitants of the district, either gratuitously or for payment. 2

A library authority are given powers for the purchase or hiring of land, and also, in the case of a library district being an urban sanitary district, for the appropriation, for the purposes of the Act, of land already vested in them. 3 Persons holding land for ecclesiastical, parochial, or charitable purposes are empowered, subject to certain conditions, to grant or convey by way of gift, sale, or exchange, a limited quantity of such land to a library authority; and provision is made for the sale, exchange, or letting of land vested in a library authority. 4

Provisions are made vesting land and other property held for the purposes of the Act in the library authority; 5 placing the general control of libraries, c, provided under the Act in their hands; 6 enabling them to appoint and dismiss salaried officers and make regulations as to their libraries, c.; 7 â enabling library authorities of two or more parishes, with the consent of the voters in each parish, to enter into agreements to share the expenses of libraries, c.; enabling a library authority, with the consent of the voters and of the Charity Commissioners, to make like agreements with the governing body of any library, c, established or maintained out of funds under the jurisdiction of the Charity Commissioners, and in case of inability, objection, or failure on the part of such governing body to enter into such agreement, enabling the Charity Commissioners to become party to the agreement on behalf of the governing body; 8 and enabling a library authority to accept a parliamentary grant subject to conditions. 9

The expenses of the Act, in a library district being a parish, are to be defrayed out of a rate to be levied with and as part of the poor rate, subject to this qualification: " that every person assessed to the poor rate in the said parish in respect of lands used as arable, meadow, or pasture ground only, or as woodlands or market-gardens, or nursery-grounds, shall be entitled to an allowance of two-thirds of the sum assessed

upon him in respect of those lands for the purposes " of the Act. 10 Where the parish is not combined with another parish such amount only is to be raised as is from time to time sanctioned (1) 55 56 Vict. c. 53, s. 11. (5) lb. s. 14.

(2) lb. (6) lb. s. 15 (1).

(3) lb. ss. 11, 12. As to the (7) lb. s. 15 (2). acquisition of land by a parish (8) lb. s. 16. council for the purposes of the (9) lb. s. 17. adoptive Acts, see, ante, p. 63. (10) lb. s. 18 (i).

The Local Government Act, 1864.

Part 56 57 Vict, c. 73, s. 7, a.

Additional powers of parish council.

39 40 Vict, c. 56.

38 39 Vict, c. 55.

53 54 Vict. c. 59.

by the vestry, and the amount so sanctioned is to be paid under order of the vestry to the person appointed by the library authority to receive it. 1 Where, on the other hand, a parish is combined with another parish, or annexed to a neighbouring library district, the amount of the expenses to be incurred by the library authority is not subject to the control of the vestry. 2

A library authority have borrowing powers, and the Public Works Loan Commissioners are empowered to lend to them. 3 Provisions are made as to the keeping and audit of the accounts of library authorities. 4 The Act also contains provisions as to the determination of agreements entered into between two or more vestries or library authorities, or between a library authority and any other body, 5 and savings with regard to an Act relating to Oxford and to local Acts. 6

Sect 8.â (1.) A parish council shall have the following additional powers, namely, powerâ (a) to provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting; and (b) to provide or acquire land for such buildings and for a recreation ground and for public walks; and (c) to apply to the Board of Agriculture under section nine of the Commons Act, 1876; and (cz) to exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections; and (e) to utilise any well, spring, or stream within their parish and provide facilities for obtaining water (1) 55 56 Vict. c. 53, s. 18 (2), and see s. 26.

(2) lb. ss. 9, 10, 18 (3).

(3) lb. s. 19. As to the powers of a parish council to borrow for the purposes of the adoptive Acts, see sect. 12, and the note to that section, post.

therefrom, but so as not to interfere with the 56 57 Vict, rights of any corporation or person; and c 73 ' s- 8- (J) to deal with any pond, pool, open ditch, drain, or



place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority; and (g) to acquire by agreement any right of way, whether within their parish or an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof; and (li) to accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof; and (i) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity; and (k) to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned. (2.) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

(o.) Nothing in this section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works.

(4.) Notice of any application to the JSoard of Agri- 56 57 Vict, culture in relation to a common shall be served upon the c. 73, s. 8. council of every parish in which any part of the common to which the application relates is situate.

Note. Acquisition of land by parish council. â As to the acquisition of land by a parish council, see sect. 9, and the note to that section.

Application by parish council under the Commons Act. â Sect. 9 of the Commons Act, 1876, x enacts that " the Inclosure Commissioners now the Board of Agriculture 2 shall from time to time, upon application made by the persons interested in any common, issue in such form as they may deem expedient information and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1868, as amended by this Act are to be made to the commissioners now the Board of Agriculture, with such explanations as they may think fit with respect to the law for the regulation and inclosure of commons, and the persons so interested may apply accordingly in manner directed by the Inclosure Commissioners" now the Board of Agriculture.

A short sketch of the scheme of the Inclosure Acts with regard to the inclosure or regulation of a common will be found, ante, p. 51.

Recreation grounds. â Various enactments, under which recreation grounds may be provided for a parish, are referred to in the notes to sects. 6 and 7. 3 Recreation grounds provided under these enactments for a parish, whether before or after the

parish council comes into office will, under those sections, as has been seen, 4 in general be subject to the control of the parish council.

The sections of the Public Health Act, 1875, referred to in sub-clause id) of the present section, are as follows:â

Sect. 164. 5 " Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

"Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable."

Sect. 183. " Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings (1) 39 40 Vict. c. 56, s. 9. (4) See pp. 45, 62.

(2) See, ante, p. 51. (5) 3S 39 Vict. c. 55, s. 164.

(3) See pp. 48, 52, 53, 56, 57, 78. (6) lb. s. 183.

I. Powers and Duties of Parish Councils and Meetings. S5 for each day after written notice of the offence from the local 56 57 Vict. authority; but all such byelaws imposing any penalty shall be c- 73. s- 8 "â so framed as to allow of the recovery of any sum less than the full amount of the penalty.

"Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any byelaws made in pursuance of such provisions of any greater penalty than the penalties in this section specified."

Sect. 184. 1 "Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such byelaws be confirmedâ

"Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application; and

"Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

"The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

"A byelaw required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority."

Sect. 185. 2 "All byelaws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any

ratepayer of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a rural authority shall also be transmitted to the overseers of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours."

Sect. 186. 3 "A copy of any byelaws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making, (1) 38 39 Vict. c. 55, s. 184. (3) lb. s. 186.

(2) Jb. s. 185.

56 57 Vict, confirmation and existence of such byelaws without further or c 73, s. 8, n. other proof."

Sect. 44 of the Public Health Acts Amendment Act, 1890, 1 is as follows:â

"(1.) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.

"(2.) An urban authority may either themselves provide and let for hire, or may license any person to let for hire, any pleasure boats on any lake or piece of water in any such park or pleasure ground, and may make byelaws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boathouses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat."

Affairs of the church. Ecclesiastical charity. â These expressions are defined in sect. 75 (2).

Sale, c, of lands of parish council. â It would seem that the provisions in sub-sect. (2), rendering the consent of the Local Government Board, or consent or approval under the Charitable Trusts Acts, necessary to the sale, c. of lands vested in the parish council, will not apply where the parish council propose to deal with their lands, not under the powers conferred on them by that sub-section, but under powers derived from some other enactment. Thus it is submitted that a parish council may, without obtaining such consent as is mentioned in the sub-section, sell lands vested in them to any person or body authorised to purchase such lands under the Lands Clauses Acts, or exchange such lands under the Inclosure Acts.



The words in sub-sect. (2), "such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates" appear to refer to sect. 29 of the Charitable Trusts Amendment Act, 1855, 2 which enacts that ( x ) 53 54 Vict. c. 59, s. 44. Trusts Acts generally, see the note (2) 18 19 Vict. c. 124, s. 29. to sect, impost. With regard to the Charitable

"it shall not be lawful for the trustees or persons acting in the 56 57 Vict, administration of any charity to make. otherwise than c- 73 s. S, n. with the express authority of Parliament, under any Act already passed or which may hereafter be passed, or of a court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the board i. e. the Charity Commissioners, any sale. of the charity estate."

The provisions of sub-sect. (2) will not, it seems, apply to the sale or exchange of any land acquired by a parish council under sect. 9; inasmuch as special provisions are made as to the sale or exchange of land so acquired by sub-sect. (13) of that section, which incorporates, subject to adaptations to be prescribed by the Local Government Board, a section of the Allotments Act, 1887, 1 authorising the sale or exchange of land with the consent of the county council, and providing that in the case of such a sale, certain persons shall have rights of pre-emption. 2

By sect. 6, (1, d), the powers of the guardians as to the sale, exchange, or letting of parish property, are transferred to the parish council. These powers are discussed in the note to that section, ante, pp. 57-60. Certain other enactments, under which parish property may be disposed of, are mentioned in sect. 52, and in the note to that section.

Duties of district council. â With regard to the obligations of a district council as to water supply and sanitary works, see the note to sect. 16, post.

Sect. 9. â (1.) For the purpose of the acquisition of Powers for land by a parish council the Lands Clauses Acts shall acquisition be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 38 33 Via. 1875, shall apply as if the parish council were referred to c. 55. therein.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

(3.) If on any such representation, or on any pro- 50 51 Vict, ceeding under the Allotments Acts, 1887 and 1890, a 0. 48. county council are satisfied that suitable land for the 53 54 lct said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable. terms by voluntary agreement, and that the (1) 50 51 Vict. c. 48, s. n, set (2) See further, the note to sect. 9, out in the Appendix. post, p. 95.

56 57 Vict, circumstances are such as to justify the county council c 73. s. 9. j n p rocee di n nr under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons

interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—(a.) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order: (h.) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order: (c.) Upon any such confirmation the order, and if 56 57 Vict. amended as so amended, shall become final and c ' 7j ' s have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act. (8.) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this section, as if those sections and sub-sections were herein re-enacted, and in terms made applicable to such inquiry. (9.) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways 8 9 Vict. Clauses Consolidation Act, 1845, with the necessary c-20-adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (a), (b), and (c) of sub-section (4) of that section are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

(11.) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed hear counsel or expert witnesses.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

(13.) Sub-section (2) of section two, if the land is taken 56 57 Vict, for allotments, and, whether it is or is not so taken, sub-c 73, s. 9. sec tions (5), (6), (7), and (8) of section three of the Allot-50 51 Vict, inents Act, 1887, and section eleven of that Act, and co 48. section three of the Allotments Act, 1890, are incorporated 53 54 Vict. w j. j 1 jg sec tion, and shall, with the prescribed adaptations, apply accordingly.

(14.) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council; and any land purchased by a county council for Allotments under the Allotments Acts, 1887 and 1890, and this Act, or any of them, shall be assured to the parish council, and in that case sections five to eight of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority.

(15.) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

(16.) In this section the expression " allotments" includes common pasture where authorised to be acquired under the Allotments Act, 1887.

(17.) Where, under the Allotments Act, 1890, the Allotments Act, 1887, applies to the purchase of land by the county council, that Act shall apply as amended by this section, and the parish council shall have the like power of petitioning the county council as is given to six parliamentary electors by section two of the Allotments Act, 1890.

(18.) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough.

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act.

Note. Acquisition of land for purposes of parish council. â The present section relates to the acquisition of land, both for the purposes of a parish council and for allotments. It will be convenient to discuss the course of proceedings in the two cases separately, and to deal first with the acquisition of land for the purposes of a parish council. The various matters to be prescribed under the section are, it may be premised, by sect. 75 (2), to be prescribed by the Local Government Board.

The Allotments Acts, 1887 and 1890, 1 certain portions of (1) 50 51 Vict. c. 4S; 53 54 Vict. c. 65.



which are incorporated with the present section, will be found 56 57 Vict, in the Appendix. c. 73, s. 9, n.

A parish council will be able to acquire land by agreement, without the intervention of any other authority; and for that purpose they will, under sub-sect. (1), be able to avail themselves of the provisions of the Lands Clauses Acts as to the purchase of land by agreement. 1 These Acts it is beyond the scope of the present work to discuss. It will be enough to say that the provisions they contain as to the purchase of lands by agreement are principally designed to enable lands to be sold, to persons or bodies authorised to purchase under the Acts, where the persons entitled to such lands are under disabilities; as where lands are held by tenants in tail or for life, married women, infants, lunatics, charity trustees, c.

Sect. 178 of the Public Health Act, 1875, 2 is also to apply to the sale of land to a parish council. That section empowers the Chancellor and Council of the Duchy of Lancaster to sell lands belonging to the Crown in right of the Duchy to local authorities.

Sub-sect. (13) of the present section incorporates, subject to prescribed adaptations, among other enactments, sub-sect. (7) of sect. 3 of the Allotments Act, 1887. 3 This provision will, apparently, enable persons under disabilities to let land to a parish council.

If the parish council fail in an endeavour to acquire land by agreement, their next step will be to represent the case to the county council under sub-sect. (2). The county council will thereupon inquire into the representation, and, if they determine to proceed with the matter, they may, under sub-sects. (3) and (4), after public inquiry, make an order for the compulsory purchase of the land proposed to be taken, or any part of it. The decision of the county council may be the subject of appeal to the Local Government Board in the manner provided by sub-sects (5), (6), and (7). and, in the event of such an appeal that Board, if the county council have refused to make the order, may themselves make such an order, or if the council have made the order may confirm it with or without amendment, or may disallow it. An order of the county council for the compulsory acquisition of land will in every case require confirmation by the Local Government Board, but such confirmation cannot be withheld if the preliminary proceedings have been properly taken, unless the order is appealed against, and the appeal is persisted with.

(1) Under the Interpretation Act, the Lands Clauses Consolidation 1859 (52 53 Vict. c. 63), s. 23, Act, 1869 (32 33 Vict. c. 18), and the expression "Lands Clauses the Lands Clauses (Umpire) Act,

Acts" means the Lands Clauses 1883 (46 47 Vict. c. 15) and any Consolidation Act, 1845 (8 9 Acts for the time being in force

Vict. c. 18), the Lands Clauses amending the same. Consolidation Acts Amend-ment (2) 38 39 Vict. c. 55, s. 178.

Act, 1860 (23 24 Vict. c. 106), (3) 50 51 Vict. c. 48, s. 3 (7).

56 57 Vict. When the order is finally confirmed, the county council are, c- 73. s. 9) n. under sub-sect (9), to carry it into effect; but the land is, under sub-sect. (14), to be assured to the parish council, and the county council are to be repaid their expenses in the matter by the parish council under sect. 72 (4), which is rendered applicable to the case by sub-sect. (19) of the present section.

Acquisition of land for allotments. Power to hire land for allotments is conferred on parish councils by the next section. The present section, so far as it relates to allotments, appears to be confined to the purchase of land for that purpose. 1

The provisions of the section as to allotments are by no means free from obscurity. In particular, difficulty arises from the fact that the expression "parish" has not the same meaning in the Allotments Acts, 1887 and 1890, as it has in the present Act. In the former Acts the expression means, under sect. 14 (2) of the Allotments Act, 1887, a "contributory place," while in the present Act it means a poor law parish. 3 This difficulty arises, however, only in some instances, as very frequently a parish within the meaning of the present Act is a contributory place.

The following is an outline of the proceedings that, under the Allotments Acts as amended by the present Act, may be taken where a parish council, of a parish that is a contributory place, desire that land should be purchased for allotments for the benefit of the inhabitants of their parish:â

A parish council are not authorised themselves to purchase land by agreement for the purpose of allotments. If they desire that land should be purchased for that purpose their first step therefore must be to make a representation to the rural district council under sect. 6 (3) ante, and sect. 2 of the Allotments Act, 1887. 4 The district council may then purchase land by agreement for allotments for the benefit of the parish; and, if they are unable to effect such a purchase upon reasonable terms, they may petition the county council; 5 whereupon the present section will come into operation and the county council, after due preliminaries, may make an order for the compulsory purchase of the land proposed to be taken or any part of it. To the confirmation of such an order, to an appeal against such an order, and to an appeal against a refusal to make such an order, sub-sects. (5) (6) and (7) apply (1) It is submitted that this is of land for allotments, only comes so, notwithstanding that by sub into operation where it is proposed sect. (13), sub-sect. (7) of sect. 3 of to take land for that purpose come the Allotments Act, 1887 (50 51 pulsorily.

Vict. c. 48), is, subject to adapta (2) 50 51 Vict. c. 48, s. 14(2).

tions, incorporated with the present (3) The enactments relating to section for all purposes. For that the formation and boundaries of sub-section is confined to the letting contributory places are mentioned of land for the purpose of allot in the note to sect. 15, post.

ments by agreement, and the present (4) 50 51 Vict. c. 48, s. 2.

section, as regards the acquisition (5) lb. s. 3 (2).

in like manner as in the case of an order or refusal of an order 56 57 Vict.

for the compulsory acquisition of land for the purposes of a c- 73. s- 9. Â â parish council, except that the district council, and not the parish council, have the right of appeal if the order is refused.

The order when made will, under sub-sect. (9), be carried into effect by the district council. And after the land is acquired it will be held by the district council and let by them in allotments; but, under sects. 6 and 9 of the Allotments Act, 1887, 1 and sect. 6 (3, 4), ante, the district council may, and if the parish council petition them so to do must, appoint the parish council managers of the allotments.

If on the other hand the district council fail to acquire sufficient and suitable land, the parish council may petition the county council under sub-sect. (17) of the present section and sect. 2 (1) of the Allotments Act, 1890." 2 Thereupon the county council after inquiry may pass a resolution having the effect of transferring to themselves the powers and duties of the district council under the Allotments Act, 1887. 3 If the county council refuse to pass this resolution the matter will apparently be at an end, as sub-sect. (5) appears only to come into operation, where the parish council petition the county council under the Allotments Act, 1890, if, though they have resolved that land for allotments ought to be provided, the county council refuse to make an order for the compulsory acquisition of land. If the county council transfer the powers in question to themselves they may then acquire land by agreement, and, if they are unable so to acquire suitable land on reasonable terms, they may proceed under the present section to make an order for the compulsory purchase of the land. Such an order, or the refusal to make such an order, will be subject to the provisions of the section as to appeals and confirmation as in other cases where the county council are empowered by the section to make an order for the compulsory purchase of land. When the land has been purchased by the county council, whether by agreement or compulsorily, it is under sub-sect. (14) to be conveyed to the parish council; and the parish council will let it in allotments under sects. 5-8 of the Allotments Act, 1887. 4 As to the manner in which the expenses of the county council are to be defrayed in such cases, see sect. 6, of the Allotments Act, 1890, 5 and the note to that section in the Appendix.

The foregoing account of the procedure where it is proposed to purchase land for allotments, has been based on the assumption that the initiative is taken by a parish council. The section will, under sub-sect. (17), apply also where a district council, either of an urban or rural district, take proceedings of their own motion, or where the initiative is taken by six (1) 50 51 Vict. c. 48 ss. 6, 9. (4) 50 51 Vict. c. 48, ss. 5-8.

(2) 53 54 Vict. c. 65, s. 2 (1). (5) 53 54 Vict. c. 65, s. 6.

(3) lb. s. 2 (2).

electors. The six electors, however, are not entitled to appeal to the Local Government Board in the last resort. And by sub-sect. (18) the section will apply with modifications to obtaining land for allotments for the benefit of the inhabitants of a county borough.

Order for compulsory acquisition of land. â By sub-sects. (6) and (8) of sect. 3 of the Allotments Act, 1887, 1 which, by sub-sect. (13) of the present section, are applied, subject to prescribed adaptations, to the taking of land, whether for allotments or for the purposes of a parish council, an order for the compulsory acquisition of land is not to extend to any park, garden, pleasure-ground, or the land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company which is or may be required for the purposes of their undertaking, or to any right to coal or metalliferous ore; and, in making the order, regard is to be had in certain specified respects to the interests of the landowner.

By sect. 2 (2) of the same Act, 2 which by sub-sect. (13) is applied, subject to prescribed adaptations, to the taking of land for allotments under the present section, land for that purpose is not to be taken except at such a price or rent that all expenses,



with certain exceptions, incurred in acquiring the land, and otherwise in relation to the allotments, may reasonably be expected to be recouped out of the rents obtained in respect thereof.

An order under the present section for the compulsory acquisition of land will put in force, as regards the land it affects, the compulsory clauses of the Lands Clauses Acts with some modifications. The compulsory provisions of these Acts, which may be regarded as constituting the general law with regard to the compulsory acquisition of land for public purposes, it is beyond the scope of the present work to discuss. Subsects. (10), (n), and (13), however, make certain modifications in the Lands Clauses Acts for the purposes of the present section, which may be briefly summarized.

In the first place the order is to incorporate, with the necessary modifications, sects. 77-85 of the Railways Clauses Consolidation Act, 1845, 3 which relate to the rights of owners of mines under and adjacent to lands taken for a railway. Secondly, questions of disputed compensation are to be dealt with in the manner provided by sect. 3 of the Allotments Act, 1887. 4 The most important provisions of that section, as to questions of disputed compensation, are that such questions are to be referred to a single arbitrator, and that the arbitrator is to have certain special powers in relation to costs. Again, counsel and expert witnesses are not, except in such cases as (1) 50 51 Vict. c. 4S, s. 3 (3) 8 9 Vict. c. 20, ss. 77-85. (6, 8). (4) 5Â 51 Vict. c. 48, s. 3.

(2) lb. s. 2 (2).

may be prescribed, to be heard by the arbitrator. Lastly, the 5 6 57 Viet. arbitrator is not to make any additional allowance in respect of c ' ' the purchase being compulsory. The last-mentioned provision appears to be intended to meet the practice of allowing, in assessing compensation for land compulsorily taken, in addition to the estimated value of the land to the owner, which in principle is the proper amount of the compensation, a certain percentage by way of solatium to the owner for being deprived of his land against his wish, even at a fair price.

Sale or exchange of unsuitable or superfluous land. â By sub-sect. (13), sect. n of the Allotments Act, 1887, 1 is, subject to prescribed adaptations, incorporated with the present section. That section, which enables land acquired for allotments to be sold or exchanged with the consent of the county council, where it is no longer required, or where more suitable land is available, will therefore apply not only to land acquired for allotments, but also to land acquired under the present section for the purposes of a parish council. By the section in question, sects. 128-132 of the Lands Clauses Consolidation Act, 1845, 2 are rendered applicable to a sale effected under its provisions. These sections require the land to be offered to the person for the time being entitled to the lands (if any) from which the land proposed to be sold was originally severed, and failing him, to the several persons whose lands immediately adjoin the land proposed to be sold; provide, if the right of pre-emption is claimed, for the settlement of any difference as to the price by arbitration; and contain certain provisions as to the form and effect of the conveyance of the land to the purchaser.

Inquiry by local Government Board. â The portions of the Public Health Act, 1875, 3 applied by sub-sect. (8) to inquiries by the Local Government Board under the present section are as follows:â

Sect. 293. " The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act."

Sect. 294. " The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein."

Sect. 295. "All orders made by the Local Government (1) 50 51 Vict. c. 48, s. 11. (3) 38 39 Vict. c. ss, ss293- (2) 8 9 Vict. c. 18, ss. 128-132. 296, 297 (i, 2).

56 57 Vict. Board in pursuance of this Act shall be binding and conclusive c. 73, s. 9, n. i n respect of the matters to which they refer, and shall be published in such manner as that Board may direct."

Sect. 296. "Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts."

Sect. 297. "With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made:â (1.) "The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates: (2.) " Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections:" With regard to the power of poor law inspectors, in relation to witnesses and their examination, c, the Poor Law Board Act, 1847, x contains the following provisions:â

"The said inspectors may summon before them such persons as they may think necessary for the purpose of being examined before them upon any matter concerning the administration of the laws relating to the relief of the poor, or any other matter placed by law under the control or regulation of the commissioners now the Local Government Board, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, writings, or copies of the same, in anywise relating to such matter, and not relating to or involving any question of title to any lands, tenements, or hereditaments not being the property of any parish or union, and may examine any person whom they shall so summon, or who shall voluntarily come before them to be examined upon any such matter upon oath, which each of the said inspectors shall be empowered to administer, or instead of administering an oath, the inspector may require the party examined to make and subscribe a declaration of the

truth of the matter respecting which he shall have been or shall be so examined; and all i) 10 11 Vict. c. 109, s. 21.

summonses made by any such inspector for any such purpose 56 57 Vict. as aforesaid shall be obeyed by all persons as if such summons c- 73, â 9. n. had been the summons and order of the commissioners now the Local Government Board, and the non-observance thereof shall be punishable in like manner; and the costs and expenses of such person so summoned shall be paid in such cases and in such manner as the costs and expenses of persons summoned under the authority of the first recited Act the Poor Law Amendment Act, 1834, 1 are now payable: provided always, that no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode."

Under the same Act 2 failure to attend in obedience to the summons of a poor law inspector is a misdemeanour, and giving false evidence before him is perjury.

Inquiry by county council. â The effect of sub-sect. (12) is to apply to inquiries held by or on behalf of a county council under the present section, sects. 294 and 296 of the Public Health Act, 1875. 3 These sections are set out above.

By sub-sect. (13), sect. 3 of the Allotments Act, 1890, 4 is, with prescribed adaptations, incorporated with the present section. That section requires the appointment by a county council of a standing committee to which certain matters connected with allotments are as of course to be referred, and provides that an inquiry under the Allotments Acts shall be held by such one or more members of the standing committee, or such officer of the county council or other person as the standing committee may appoint to hold the same.

With regard to the use of schoolrooms and rooms maintainable out of local rates for the purpose of an inquiry as to allotments, see sect. 4, and the note to that section, ante.

Sect. 10.â (1.) The parish council shall have power to Hiring of hire land for allotments, and if they are satisfied that land for allotments are required, and are unable to hire by agree- ailotmedts-ment on reasonable terms suitable land for allotments, they shall represent the case to the county council, and the county council may make an order authorising the parish council to hire compulsorily for allotments, for a period not less than fourteen years nor more than thirty-five years, such land in or near the parish as is specified in the order, and the order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an order of the county council made under the last preceding section of this Act, and that section shall apply as if it were herein re-enacted (i) 4 5 Will. IV. c. 76. 296.

(2) 10 11 Vict. c. 109, s. 26. (4) 53 54 Vict. c. 65, s. 3.

(3) 38 39 Vict. c. 55, ss. 294, 56 57 Vict, with the substitution of " hiring " for " purchase " and c. 73, s. 10. yifia the other necessary modifications.

(2.) A single arbitrator, who shall be appointed in accordance with the provisions of section three of the Allotments Act, 1887, and to whom the provisions of that section shall apply, shall have power to determine any questionâ (a) as to the terms and conditions of the hiring; or (b) as to the amount of compensation for severance; (c) as to the compensation to any tenant upon the determination of his tenancy; or (J) as to the apportionment of the rent between the land taken by the parish council and



the land not taken from the tenant; or (e) as to any other matter incidental to the hiring of the land by the council, or the surrender thereof at the end of their tenancy; but the arbitrator in fixing the rent shall not make any addition in respect of compulsory hiring.

(3.) The arbitrator, in fixing rent or other compensation, shall take into consideration all the circumstances connected with the land, and the use to which it might otherwise be put by the owner during the term of hiring, and any depreciation of the value to the tenant of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council.

(4.) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council shall as far as possible be provided for by taking such compensation into account in fixing, as the case may require, the rent to be paid by the parish council for the land hired by them, and the apportioned rent, if any, to be paid by the tenant for that portion of the holding which is not hired by the parish council.

(5.) The award of the arbitrator or a copy thereof, together with a report signed by him as to the condition of the land taken by the parish council, shall be deposited and preserved with the public books, writings, and papers of the parish, and the owner for the time being of the land shall at all reasonable times be at liberty to inspect the same and to take copies thereof.

(6.) Save as herein-after mentioned, sections five to eight of the Allotments Act, 1887, shall apply to any allotment hired by a parish council in like manner as if that council were the sanitary authority and also the 5 6 57 vict- allotment managers: '

Provided that the parish councilâ (a) may let to one person an allotment or allotments exceeding one acre, but, if the land is hired compulsorily, not exceeding in the whole four acres of pasture or one acre of arable and three acres of pasture; and (b) may permit to be erected on the allotment any stable, cowhouse, or barn; and (c) shall not break up, or permit to be broken up, any permanent pasture, without the assent in writing of the landlord.

(7) On the determination of any tenancy created by compulsory hiring a single arbitrator who shall be appointed in accordance with the provisions of section three of the Allotments Act, 1887, shall have power to determine as to the amount due by the landlord for compensation for improvements, or by the parish council for depreciation, but such compensation shall be assessed in accordance with the provisions of the Agricultural Holdings (England) Act, 1883. 46 47 Vict.

(8) The order for compulsory hiring may apply, with c- 61-the prescribed adaptations, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the county council or Local Government Board sufficient for carrying into effect the order, and for the protection of the persons interested in the land and of the parish council.

(9) Nothing in this section shall authorise the compulsory hiring of any mines or minerals, or confer any right to take, sell, or carry away any gravel, sand, or clay, or authorise the hiring of any land which is already owned or occupied as a small holding within the meaning of the Small Holdings Act, 1892. 55,)(; vict.

(10) If the land hired under this section shall at any c 31. time during the tenancy thereof by the parish council be shown to the satisfaction of the county council to be required by the landlord for the purpose of working and getting the mines, minerals, or surface minerals thereunder, or for any road or work to be used in connexion with such working or getting, it shall be lawful for the landlord of such land to resume possession thereof upon giving to the parish council twelve calendar months previous notice in writing of his intention so to do, and upon such resumption the landlord shall pay to the parish

The Local Government Act, 1894.

Part 56 57 Vict. council and to the allotment holders of the land for the c. 73, s. 10. m e b e i n g such sum by way of compensation for the loss of such land for the purposes of allotments as may be agreed upon by the landlord and the parish council, or in default of such agreement as may be awarded by a single arbitrator to be appointed in accordance with the provisions of section three of the Allotments Act, 1887, and the provisions of that section shall apply to such arbitrator.

The word "landlord" in this sub-section means the person for the time being entitled to receive the rent of the land hired by the parish council.

(11.) The Local Government Board shall annually lay before Parliament a report of any proceedings under this and the preceding section.

Note. Hiring of land for allotments. â The provisions of the preceding section relating to the purchase of land, which are applied to the hiring of land for allotments by sub-sect. (1), are discussed at some length in the note to that section. The Allotments Act, 1887, J will be found in the Appendix.

Certain lands not to be Aired compulsorily. â Certain kinds of land and of rights in land to which an order for the compulsory hiring of land is not to extend, are mentioned in sub-sect. (9). Further restrictions as to the lands that may be included in such an order are contained in sub-sects. (6) and (8) of sect. 3 of the Allotments Act, 1887, 2 which, subject to adaptations to be prescribed by the Local Government Board, are applied to the compulsory hiring of land for allotments by sect. 9 (13) and sub-sect. (1) of the present section.

The expression "small holding" is defined in the Small Holdings Act, 1892, 3 as meaning " land acquired by a council under the powers and for the purposes of this Act, and which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is of an annual value for the purposes of the income tax not exceeding fifty pounds." It may be doubted, however, whether in sub-sect. (9) of the present section the expression is used as confined in meaning to land actually acquired by a council under the Small Holdings Act, 1892, more particularly as in that Act itself the expression is in one instance at least 4 clearly used of land that has not been so acquired.

Eestrictions Sect- 11-â W.- P ar i sn council shall not, without the on expen- consent of a parish meeting, incur expenses or liabilities diture. which will involve a rate exceeding threepence in the (1) 50 51 Vict. c.

(3) 55 56 Vict. c. 31, s.

1 (2).

I. Powers and Duties of Parish Councils and Meetings. lot pound for any local financial year, or which will involve 56 57 Vict. a loan. 0.73,5.11, (2.) A parish council shall not, without the approval of the county council, incur any expense or liability which will involve a loan.

(3.) The sum raised in any local financial year by a parish council for their expenses (other than expenses under the adoptive Acts) shall not exceed a sum equal to a rate of sixpence in the pound on the rateable value of the parish at the commencement of the year, and for the purpose of this enactment the expression " expenses " includes any annual charge, whether of principal or interest, in respect of any loan.

(4.) Subject to the provisions of this Act, the expenses of a parish council and of a parish meeting, including the expenses of any poll, shall be paid out of the poor rate; and where there is a parish council that council shall pay the said expenses of the parish meeting of the parish; and the parish council, and where there is no parish council the chairman of the parish meeting, shall, for the purpose of obtaining payment of such expenses, have the same powers as a board of guardians have for the purpose of obtaining contributions to their common fund.

(5.) The demand note for any rate levied for defraying the expenses of a parish council or a parish meeting, together with other expenses, shall state in the prescribed form the proportion of the rate levied for the expenses of the council or meeting, and the proportion (if any) levied for the purpose of any of the adoptive Acts.

Note. Definitions. â The expression " local financial year," by virtue of a definition contained in the Local Government Act, 1888, 1 and applied to the construction of the present Act by sect. 75 (1), means the twelve months ending on the 31st March.

The expression "rateable value" is defined by sect 75 (2) as meaning " the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate."

Definitions of the expressions " expenses " and " liabilities " will be found in the note to sect. 75.

Expenditure of parish council. â The power of a parish council to spend money, it must not be forgotten, is strictly limited to such purposes as are authorised either expressly or by implication by statute; 2 and it will be the duty of the district auditor by whom the council's accounts are audited, under sect. 58, to disallow any item of expenditure not so (1) 51 52 Vict. c. 41, s. 73.

(2) See the note to sect. 3, ante, p. 13.

56 57 Vict, authorised and to take steps to compel persons responsible for c. 73, s. 11, n. suc h expenditure to refund the sum spent.

The Local Government Board have, however, powers which practically enable them to permit expenditure by parish councils and other local authorities which would not otherwise be justifiable. In the first place, persons aggrieved by the decision of a district auditor may appeal to the Local Government Board, and upon such an appeal the Board have power to remit a disallowance upon equitable grounds though it may have been lawfully made. 1 Secondly, by the Local Authorities (Expenses) Act, 1887, 2 which incorporates a definition of " local authority" that will include a parish council, it is enacted that " expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have



been sanctioned by the Local Government Board." The Board, it is believed, do not regard this Act as justifying them in permitting expenditure otherwise unauthorised of a recurrent character.

Expenses of legal proceedings. A local authority such as a parish council, are, as has been mentioned, 3 to a considerable extent in the position of trustees; and they have accordingly the ordinary right of trustees to defend their property, rights, powers and privileges, and to defray the costs of the necessary legal proceedings out of their funds. 4 They may on the same principle in proper cases defray out of their funds the expenses of opposing a private bill in Parliament that threatens their property or rights and powers. 5

The Borough Funds Act, 1872, 6 authorises, upon certain conditions, any " governing body " to promote or oppose any local and personal bill or bills in Parliament or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their district, and to defray the costs out of their funds. The expression " governing body " in that Act, however, which is defined as meaning " the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts," 7 appears not to include parish councils. The Act, it should be mentioned, does not take away or diminish any rights or powers possessed by a governing body of a district independently of the Act. 8 (1) See the note to sect. 58, post. White (18S4), 14 Q. B. D. 358, 52 (2) 50 51 Vict. c. 72. " L. T. 116; 49 J. P. 294; S. C. nom.

(3) See the note to sect. 3, ante. Reg. v. Sibly, 54 L. J. M. C. 23 (4) Keg. v. Tavnorth Mayor 33 W. R. 248.

Â c.) (1868), 19 L. T. 433; 17 (6) 35 36 Vict. c. 91.

VV. R. 231. (7) . s. 1.

(5) A. G. v. Brecon Mayor (8) lb. s. 8; and see A. G. v. (1878), 10 Ch. D. 204; 48 L. J. Brecon, ubi sup.

Ch. 153; 40 L. T. 52; Reg. v.

Retrospective rates. It is well established that in general 56 57 Vict, rates ought not to be retrospective, or, in other words, that a c- 73 s- n Â n-rate ought to be levied to meet future and not past expenses. It follows from this doctrine that it is not in general lawful, in the absence of statutory authority, to apply the proceeds of a rate towards expenses incurred before the rate was made. 1

The doctrine is founded upon the ground that " succeeding inhabitants cannot legitimately be made to pay for services of which their predecessors have had the whole benefit." 2

It seems that the doctrine must be applied with a certain degree of latitude, at all events in the case of expenses that cannot practicably be provided for prospectively, 3 but in the present state of the authorities it is impossible to state its precise limitations.

Having regard to the doctrine, it will be proper for a parish council from time to time to estimate their probable expenses for an ensuing period and to issue their precepts accordingly, and as far as possible to avoid being obliged to issue a precept for a contribution to meet any expense already incurred.

Obtaining contributions. â Guardians are empowered to require contributions towards their common fund from the several parishes in their union by the Poor Law Amendment Act, 1834, 4 but that Act gives them no specific powers for the recovery of such contributions.

By the Poor Rate Act, 1839, 6 however, it is enacted that " in every case in which any contribution by overseers or other officers of any parish of moneys required by the board of guardians or persons acting as guardians for such parish, or for any union which shall include such parish for the performance of their duties, shall be in arrear, it shall be lawful for any two justices acting within the district wherein such parish shall be situate, on application under the hand of the chairman or acting chairman of such board, to summon the said overseer or other officers to shew cause, at a special sessions to be summoned for the purpose, why such contribution has not been paid, and after hearing the complaint preferred under the (1) See *Woods v. Reed* (1837), 48 J. P. 486; *Jersey Lord* vâ. Ux- 2 M. W. 777; 1 Jur. 407; bridge (rural sanitary authority)

*Harrison v. Stickney* (1848), 2 (1891), 55 J. P. 165. Cf. also

H. L. C. 108; *A. G. v. Lichfield Burland v. Kingston-upon-Hull (Corporation)* (1848), II B. 120; 17 (local board) (1862), 3 B. S. 271;

L. J. Ch. 472; *Reg. v. Read* (1849), 32 L. J. Q. B. 1759 Jur. (N. s.) 13 Q. B. 524; 4 New Sess. Ca. 7; 275; 7 L. T. 316; 11 W. R. 33; 18 L. J. M. C. 164; 13 Jur. 789; *Worthington v. Hulton* (1865), L. R.

*Jones v. Johnson* (1852), 7 Ex. 452; I Q. B. 63; 35 L. J. Q. B. 61; 14 21 L. J. M. C. 102; 16 Jur. 840; W. R. 632; 13 L. T. 463. *Waddington v. London (Guardians)* (2) Per Lord Abinger, C. B., in (1858), E. B. E. 370; 28 L. J. *Woods v. Reed*, ubi sup. M. C. 115; 5 Jur. (n. s.) 242; (3) See *Reg. v. Read*; *Jones v.*

7 W. R. 93; *A. G. v. Church* (1864), *Johnson*, ubi sup. 2 Hem. M. 697; 4 N. R. 89; (4) 4 5 Will. IV. c. 76, s. 28.

*Reg. v. Bedlington (overseers)* (1884), (5) 2 3 Vict. c. 84, s. 1.

The Local Government Act, 1894.

Part 56 57 Vict, authority of such chairman or acting chairman, and on behalf c. 73, s. ii f n. of such board, if the justices at such sessions shall think fit, by-warrant under their hands and seals to cause the amount of the contribution so in arrear, together with the costs occasioned by-such arrear, to be levied and recovered from the said overseers or other officers, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs as aforesaid, when levied and recovered, to be paid to the said board: provided always, that no distress made under any such warrant of justices shall be replevisible."

And by the Poor Law Amendment Act, 1849, 1 it is further enacted that " where the guardians of any union or parish shall make any order for the payment of money upon overseers or other officers of any parish upon whom they are empowered by law to make it, and a copy of such order shall be served upon any one of such overseers or other officers, it shall be lawful for the said guardians to enforce such order against the person so served as fully and as effectually as if a copy thereof had been also served upon every one of such overseers or other officers."

Under these enactments the justices are bound to grant a distress warrant for the recovery of contributions unless there is some legal reason why such contributions should not be paid: and where justices refused to grant a distress warrant for the recovery of a contribution required from a parish on the ground that there were no paupers in the parish, a mandamus was granted to compel the justices to grant the warrant. 2 Expenses under the adoptive Acts. By sect. 7 (6) it is provided that the present Act shall not alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts, and that any such rate shall be made and charged as heretofore.

#### Borrowing by parish council.

Sect. 12.â (1.) A parish council for any of the following purposes, that is to sayâ (a) for purchasing any land, or building any buildings, which the council are authorised to purchase or build; and (b) for any purpose for which the council are authorised to borrow under any of the adoptive Acts; and (c) for any permanent work or other thing which the council are authorised to execute or do, and the cost of which ought, in the opinion of the county council and the Local Government Board, to be spread over a term of years; (1) 12 13 Vict. c. 103, s. 7.

(2) Reg. v. Boteler (1864), 33 L. J. M. C. 101; 10 Jur. (n. s.) 798 j 12 W. R. 466; S. C. nom. Ex parte Bridgend and Cowbridge (guardians), 9 L. T. 720.

may, with the consent of the county council and the 56 57 Vict. Local Government Board, borrow money in like manner c 73, s ' 12 ' and subject to the like conditions as a local authority may borrow for defraying expenses incurred in the execution of the Public Health Acts, and sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine of the Public Health Act, 1875, shall apply accordingly, 38 39 Vict, except that the money shall be borrowed on the security c- 55-of the poor rate and of the whole or part of the revenues of the parish council, and except that as respects the limit of the sum to be borrowed, one half of the assessable value shall be substituted for the assessable value for two years.

(2) A county council may lend to a parish council any money which the parish council are authorised to borrow, and may, if necessary, without the sanction of the Local Government Board, and irrespectively of any limit of borrowing, raise the money by loan, subject to the like conditions and in the like manner as any other loan for the execution of their duties, and subject to any further conditions which the Local Government Board may by general or special order impose.

(3.) A parish council shall not borrow for the purposes of any of the adoptive Acts otherwise than in accordance with this Act, but the charge for the purpose of any of the adoptive Acts shall ultimately be on the rate applicable to the purposes of that Act.

Note. Unauthorised borrowing. â A local authority such as a parish council have no power to borrow except under express statutory authority; 1 and it has been decided that an overdraft by a local authority on a bank is in effect a loan by the bank to the authority. 2

Provisions of the Public Health Act, 1875.â The sections of this Act 3 referred to in the present section, with the omission of some provisions that appear inapplicable in the case of a loan to a parish council, are as follows:â â



Sect. 233. "Any local authority may, with the sanction of the Local Government Board, for the purpose of defraying any costs charges and expenses incurred or to be incurred by (1) See Reg. v. Reed (1880), 5 of Ultra Vires."

Q. B. D. 483; 49 L. J. Q. B. 600; (2) Reg. v. Reed, ubisup.; see also 42 L. T. 835; 28 W. R. 787; 44 Brooks Co. v. Blackburn Benefit

J. P. 633. As to the respective Building Society (1884), 9 App. Ca.

rights of the parties in the case of 857; 54 L. J. Ch. 376; 52 L. T.

an unauthorised loan to such a body 225; 33 W. R. 309.

as a parish council, reference may (3) 38 39 Vict. c. 55. ss. 233, be made to Brice on the " Doctrine 234, 236-239.

56 57 Vict, them in the execution of the Sanitary Acts or of this Act, or c. 73, s. 12, n. f or the purpose of discharging any loans contracted under the

Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs charges and expenses, or for discharging any such loans as aforesaid.

Sect. 234. "The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations; (namely,)

"(1.) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years): "(2.) The sum borrowed shall not at anytime exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed:

"(4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, determine in each case; and, subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual intalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of Exchequer Bills or other Government securities, such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned:

"(5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established: Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied: (1) The omitted portion of the (2) Sub-sect. (3) relates to cases section empowers urban and rural in which the debt of an authority sanitary authorities respectively, to would exceed the assessable value mortgage certain specified funds for one year of the assessable and rates to the persons advancing premises in the district, the money.

"(6.) Where money is borrowed for the purpose of dis- 56 57 Vict, charging a previous loan, the time for repayment of c- 73Â s-12 Â n-the money so borrowed shall

not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original loan. " Where any urban authority borrow any money for the purpose of defraying private improvement expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid."

Sect. 236. " Every mortgage authorised to be made under this Act shall be by deed, truly stating the date consideration and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in schedule IV. to this Act, or to the like effect."

Sect. 237. " There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds."

Sect. 238. "Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in schedule IV. to this Act, or to the like effect.

"There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and until such entry is made the local authority shall not be in any manner responsible to the transferee.

"On the registration of any transfer the transferee his executors or administrators shall be entitled to the full benefit 56 57 Vict, of the original mortgage and the principal and interest secured c. 73, s. 12, n. thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee his executors or administrators shall be entitled to release or discharge any such mortgage or any money secured thereby.

"If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds."

Sect. 239. " If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the

appointment of a receiver to a court of summary jurisdiction; and such court may, after hearing the parties, appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid.

"On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them:

"Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum."

The forms referred to in sects. 236 and 238 respectively, which will require certain obvious modifications to fit them to the case of a loan to a parish council, are as follows:â

Form of mortgage of rates. â "By virtue of the Public Health Act, 1875, we the being the local authority under that Act for the district of in consideration of the sum of paid to the treasurer of the said district by

A. B. of for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from the rates mortgaged as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said A. B., his executors, administrators, and assigns, from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied: and it is hereby declared, that the said principal sum shall be repaid on 56 57 Vict, the day of at place of 'payment. Dated this c- 73. s 12 n Â day of one thousand eight hundred and. To be sealed with tlic common seal of the local authority '."

Form of transfer of mortgage. â "I A. B. of, in consideration of the sum of paid to me by CD. of, do hereby transfer to the said CD., his executors, administrators, and assigns, a certain mortgage, bearing date the day of and made by the local authority under the

Public Health Act, 1875, for the district of for securing the sum of and interest thereon at per centum per annum or if such tra? isfer be by endorsement on the mortgage, insert, instead of the words immediately following the word 'assigns," the within security, and all my right estate and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this day of one thousand eight hundred and

"A. B. (l. s.)"

Loans under tije Local Loans Act, 1875.â This Act, 1 which is amended by the Local Loans Sinking Funds Act, 1885,2 in one particular, does not itself confer any borrowing powers upon local authorities; but any local authority, notwithstanding any



provision in any prior Act, may borrow any loan they are authorised to borrow in accordance with its provisions. 3

The expression "local authority" is denned in the Act in terms that include local authorities under the Public Health Act, 1875, and parish councils. 4 It seems clear, therefore, though the Act is not specifically mentioned in the present section, that parish councils will be able to borrow in accordance with its provisions.

A local authority borrowing under the Local Loans Act, 1875, may borrow by means of debentures, 5 annuity certificates, 6 or, where the Act authorising the loan so provides, debenture-stock. 7 As neither the Public Health Act, 1875, nor the present Act authorises the issue of debenture-stock, a parish council will not be able to borrow by means of such stock.

Loans from the Public Works Loan Commissioners. â It has long been the practice for Parliament to provide money to be advanced in loans to various public bodies and local authorities. Such loans are now made under the Public Works Loans Act, 1875, 8 and the numerous amending Acts, by the Public Works Loan Commissioners, at whose disposal funds for the purpose are annually placed by Act of Parliament.

The Public Works Loan Commissioners are given no general power to advance money to parish councils, but they have (1) 38 39 Vict. c. 83. (S) lb. ss. 4, 5.

(2) 48 49 Vict. c. 30. (6) lb. ss. 4, 7.

(3) 38 39 Vict. c. 83. s. 31. (7) lb. ss. 4, 6.

(4) lb. s. 34. (8) 38 39 Vict. c. 89.

56 57 Vict. power to advance money for the purposes of certain of the c. 73, s. 12, n. Adoptive Acts, namely the Baths and Washhouses Acts, the Burial Acts, and the Libraries Act, 1 and they will therefore be able to advance money to parish councils acting in the execution of any of these Acts.

â Loans for purposes of the adoptive Acts. â Having regard to the express provisions in sub-clause (b) of sub-sect. (1) it seems very doubtful whether sub-clauses (a) and (c) of that subsection could be relied on as authorising a parish council to borrow for any purpose of any of the adoptive Acts, other than a purpose, if any, for which the borrowing of money is authorised by the particular Act or group of Acts in question. For example, it is very doubtful whether a parish council acting in the execution of the Lighting and Watching Act, 1833, 2 which does not authorise the borrowing of money, could borrow for any of the purposes of that Act.

The borrowing of money is authorised by the Baths and Washhouses Acts, 3 the Burial Acts, 4 and the Public Libraries Act, 5 but not by the Lighting and Watching Act, 1833, 6 or the Public Improvement Act, 1860. 7

As to the adoptive Acts generally, see sect. 7, and the note to that section, ante.

Footpaths Sect. 13.â (1.) The consent of the parish council and and roads. 0 f the district council shall be required for the stopping, in whole or in part, or diversion, of a public right of way within a rural parish, and the consent of the parish council shall be required for a declaration that a highway in a rural parish is unnecessary for public use and not repairable at the public expense, and the parish council shall give public notice of a resolution to give any such consent, and the resolution shall not operateâ

(a) unless it is confirmed by the parish council at a meeting held not less than two months after the public notice is given; nor (b) if a parish meeting held before

the confirmation resolve that the consent ought not to be given. (2) A parish council may, subject to the provisions of this Act with respect to restrictions on expenditure, undertake the repair and maintenance of all or any of the public footpaths within their parish, not being footpaths at the side of a public road, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance.

(1) 38 39 Vict. c. 89, s. 9; and (4) See ante, p. 77. see the note to sect. 7, ante. (5) See ante, p. 82.

(2) 3 4 Will. IV., c. 90. (6) 3 4 Will. IV., c. 90.

(3) See ante, p. 68. (7) 23 24 Vict. c. 30.

Note. Highways and public rights of way. â In a parish not 56 57 Vict, having a separate parish council the provisions of the present c- 73. s- J 3 n-section as to the stopping or diversion of a public right of way or the declaring of a highway to be unnecessary and not repairable at the public expense, will, by sect. 19, subject if the parish is grouped to the provisions of the grouping order, apply with the substitution of the parish meeting for the parish council.

Parish councils and meetings will have certain functions relating to highways besides those mentioned in the present section. Most of such functions will, however, be of a temporary character and will attach in certain cases only. It will be convenient in the present note, besides making observations bearing directly on the subject-matter of the section, to discuss the functions of parish councils and parish meetings as to highways generally. It seems proper, also, in order to render the subject intelligible, to premise a brief general sketch of certain branches of the law relating to highways.

1  
Meaning of expressions " highway " and " public right of way. â The term " highway " is the term properly applicable to every kind of road or path along which the public are entitled to pass. The expression " public right of way " may be aptly used to indicate the right the public have to pass along a highway; it is also sometimes loosely used as equivalent in meaning to highway, more especially in the case of a highway that is not a formed road or path.

Creation of highways. â An owner of land may dedicate a road or path over his land to the public as a highway; and, although highways are sometimes created by or in pursuance of an Act of Parliament, they usually have their origin in such a dedication, either actual or presumed. No formality is requisite to render the dedication of a highway effective. All that is necessary is that the owner should, with the intention of dedicating the way in question, allow the public to pass along it, 2 and also apparently that the public should thereupon make use of the way as a highway. 3 Though in theory the question whether a way has been dedicated as a highway depends upon the owner's intention, 4 the fact that an owner, being in a position to protect his land against trespassers, has permitted the public to pass along a way over his land for some time without interference, is evidence from which an intention on his part to dedicate the way may be presumed, 5 so that, (1) For full information as to the 29 L. T. 244; 21 W. R. 789.

law on the subject, reference may (4) See per Parke B., in *Poole v.*  
be made to Glen's " Law relating Huskinson (1843), II M. W.

to Highways." 827, at p. 830.

(2) *Jarvis v. Dean* (1826), 3 (5) *Rex v. Lloyd* (1808), 1 Camp. Bing. 447; *Poole v. Huskinson* 260; *Jarvis v. Dean* (1826), 3 Bing. (1843), 11 M. W. 827; *Eyre v.* 447; *British Museum (trustees) v. New Forest (highway board)* (1892), *Finnis* (1833), 5 C. P. 460; 56 J. P. 517. *Eyre v. New Forest (highway)* (3) *Cubitt v. Maxse* (1873), L. R. board) (1892), 56 J. P. 517. 8 C. P. 704; 42 L. J. C. P. 278; 56 57 Vict, practically, highways often become dedicated without any c 73, s. 13, n. deliberate intention on the landowner's part.

Repair of highways. â All highways which have existed from time immemorial, or which were dedicated to and used by the public prior to the passing of the Highway Act, 1835, 1 are prima facie repairable at public expense, 2 though in particular instances corporations or individuals may be liable for the repair of such a highway. 3

Since the passing of the Highway Act, 1835, 4 a formal adoption of the highway under that Act, 5 or under some similar enactment has been, and is, in almost all cases, necessary in order to cast the burden of repairing a new highway on the public. 6 There are, however, exceptional cases in which a highway dedicated since the passing of the Highway Act, 1835, may become repairable at the public expense without formal adoption: e. g., where a new highway is made by a highway authority under statutory powers, 7 or where a road made under a temporary turnpike Act remains open after the expiry of the Act. 8

Highway areas and authorities. â At common law the inhabitants of every parish in the ancient ecclesiastical sense of the term are prima facie bound to maintain the highways in the parish, 9 but by custom this liability may fall on some other area, such as a township. 10 The machinery by which the liability of the inhabitants of parishes and other areas to repair highways is discharged, is provided by a series of modern statutes, which may here be briefly referred to.

The first of the general Acts now in force dealing with the repair and management of highways, the Highway Act, 1835, 11 provides for the appointment in every parish or other area liable at common law for the maintenance of its highways, of a surveyor or surveyors to manage the highways in the parish or other area. 12

The Highway Act, 1862, 13 and the Highway Act, 1864, 14 (1) 5 6 Will. IV. c. 50. B. 399; 3 Jur. (N. S.) 713; (2) See *Reg. v. Lordsmere* (in- 5 W. R. 321. habitants) (1850), 15 Q. B. 689; (9) 1 Hawk P. C. c. 76, s. 5; *Rex*.

19 L. J. M. C. 215; 15 Jur. 82; v. *Great Broughton* (inhabitants) 4 New Sess. Ca. 205. (1770, 5 Burr. 2700; *Rex v.*

(3) As to the liability of in *Sheffield* (inhabitants) (1787), 2T. R. individuals and corporations for the 106; *Reg. v. Midville* (inhabitants) repair of highways, see *Glen's* (1843), 4 Q- B. 240; 3 G. D. Highways, Bk. I., Ch. iv. Â Â 4-6. 522.

(4) K 6 Will. IV. c. 50. (10) *Reg. v. Ardsley* (inhabitants) (5) lb. s. 23. (1878), 3 Q- B. D. 255; 47 L. J.

(6) See *Re, v. Dukinfield* (in M. C. 65; 38 L. T. 71; 26 W. R. habitants) (1863), 4 B. S. 158; 405.

32 L. J. M. C. 230. (11) 5 6 Will. IV. c. 50.

(7) *Kingston-upon-Hull* (local (12) lb. ss. 5-12.; and see post, board) v. *Jones* (1856), 1 H. N. pp. 117, 118.



489; 26 L. J. Ex. 33; 2 Jur. (N. S.) (13) 25 26 Vict. c. 61. 1193; 5 W. R. 161. (14) 27 28 Vict. c. 101.

(8) Reg. v. Thomas (1857), 7 E.

provide for the grouping of parishes and places maintaining 56 7 Vict.

their own highways into " highway districts," each under the c- 73 s- 3 n- management of a " highway board " consisting of waywardens representing the several parishes and places in the district, and of certain ex officio members. The Acts, moreover, enable areas not liable for the repair of their highways at common law to be included in certain cases in a highway district with separate representatives on the highway board. 1 In a highway district the functions of the surveyor under the Act of 1835 are discharged by the highway board; and in such a district, though certain sections of that Act are expressly declared to be inapplicable and others are impliedly superseded by the provisions of the Highway Acts 1862 and 1864, most of the provisions of the Act of 1835 apply accordingly with the substitution of the highway board for the surveyor. 2

The expression "highway parish" is commonly used to include parishes and other places maintaining their own highways under the Highway Act, 1835, 3 and also, in a highway district, any parish or place separately represented on the highway board.

Under the Public Health Act, 1875, 4 the sanitary authority of every urban sanitary district are the highway authority for their district, and in certain cases where a parish is situate partly within and partly without their district, their jurisdiction in this respect extends to the excluded part of the parish. 5

Before referring to the next important Highway Act, it should be observed that it was formerly, under a system that reached its height between 1860 and 1870, customary to constitute important highways turnpike roads, placing their repair and management in the hands of bodies of turnpike trustees. Since 1870, however, steps have been taken to wind up turnpike trusts, and there are now only some 20 miles of turnpike road in the country.

The Highways and Locomotives Amendment Act, 1878, 6 provides that highway districts shall so far as may be found practicable, be so formed as to be coincident in area with, or wholly contained in, rural sanitary districts; and enables the rural sanitary authority, where a highway district is coincident in area with the district of such authority, to be constituted the highway authority for the same. 7 The Act further provides that every turnpike road dis-<sup>1</sup>turnpiked after the 31st December, 1870, whether before or after the passing of the Act, is to be a " main road "; enables other roads to be declared main roads; and provides for the dis-<sup>2</sup>maining of roads if it is found desirable, that is to say for the reduction of a main road to the status of (1) See Reg. v. Central Wingland (3) 5 6 Will. IV. c. 50. inhabitants) (1877), 2 Q. B. D. (4) 38 39 Vict. c. 55, ss. 144-349; 46 L. J. M. C. 282; 36 148.

L. T. 798; 25 W. R. 876. (5) lb. s. 216.

(2) See the Highway Act, 1862 (6) 41 42 Vict. c. 77. (25 and 26 Vict. c. 61), ss. 17, 42. (7) lb. ss. 3, 4.

56 57 Vict, an ordinary highway. 1 Under the Act, a portion of the ex-c- 73 s- 1 3 n- pense of maintaining a main road was to fall on the county, or in certain instances, under a provision inserted with reference to Lancashire, on the hundred.

The Local Government Act, 1888, 2 transferred the maintenance of main roads in each county to the county council; subject to a provision, which has been very largely acted upon, enabling an urban sanitary authority to retain main roads in their district, in which case they receive a contribution towards the maintenance of such roads from the county council.

In six counties of South Wales—Glamorgan, Brecknock, Radnor, Carmarthen, Cardigan and Pembroke—though the main roads are, under the Local Government Act, 1888, 3 maintained by the county councils under the general law, the other highways are maintained by highway boards of a special character, each acting for a highway district under the South Wales Highways Act, 1860, and the South Wales Highway Act Amendment Act, 1878. 4

In the Isle of Wight the highways are at present managed by a body of commissioners under the Isle of Wight Highway Acts, 1813 and 1883, 5 as amended by the Local Government Act, 1888, 6 and the Local Government Board's Provisional Order Confirmation (No. 2) Act, 1889. 7

The following, therefore, are the highway areas with their respective highway authorities at present in existence: 8 (i.) Highway parishes under surveyors appointed in pursuance of the Highway Act, 1835.

(ii.) Highway districts under highway boards elected in pursuance of the Highway Acts, 1862 and 1864.

(iii.) Rural sanitary districts where the sanitary authority act as highway board.

(iv.) Urban sanitary districts, in all of which the sanitary authority are the highway authority.

(v.) Highway districts in South Wales under highway boards established under the Acts relating to South Wales.

Whether the Isle of Wight Highway Commissioners are a highway authority within the meaning of the present Act seems doubtful.

In addition to the highway authorities above mentioned, the county councils, it must be remembered, act as highway authorities as regards main roads.

Transfer of functions of highway authorities to rural district (1) 41 42 Vict. c. 77, s. 13-17. (7) 52 53 Vict. c. clxxvii; see (2) 51 52 Vict. c. 41, s. 11. schedule, Art. xxi.

(3) lb. s. 13. (8) See the definitions of the ex- (4) 23 24 Vict. c. 68; 41 expressions "highway area" and 42 Vict. c. 34; and see the Local "highway authority" in the Local Government Act, 1888 (51 52 Government Act, 1888 (1 52 Vict. c. 41), s. 13. Vict. c. 41), s. 100, rendered applic- (5) 53 Geo. III. c. xcii.; 46 able to the present Act by sect. 47 Vict. c. ccxxvi. 75 2), post, and quoted in the note (6) 51 52 Vict. c. 41, s. 12. to that section.

councils. By sub-sect. (1) of sect. 25, the powers, duties, and 56 57 Vict liabilities of every highway authority in a rural district are, as c- 73. s- 13. n- from the appointed day, transferred to the rural district council, and it is provided that rural district councils shall be the successors of the highway authority, and shall also have as respects highways, certain powers, duties, and liabilities of an urban sanitary authority. But the county council of any county are empowered to postpone the operation of the section as regards highways, within their county or any part thereof, for a term not

exceeding three years from the appointed day, or such further period as the Local Government Board may on the application of such council allow.

Cases where an urban sanitary authority act as highway authority in respect of part of a parish without their district are provided for by sub-sect. (4) of that section.

The present Act does not directly affect the powers or duties of county councils as to main roads, nor the powers and duties of an urban sanitary authority as to highways within their district.

Powers, c, of parish council as to highways. â The powers of a parish council in connection with the matters mentioned in the present section are further referred to, post, pp. 120-125.

Under sects. 16 and 19, (8), post, a parish council or parish meeting, as the case may be, are empowered, where they consider that a rural district council have failed properly to maintain any highway, to complain to the county council, who may thereupon proceed in the matter in the manner provided by sect. 16. Sect. 26, post, which makes it the duty of a district council to protect public rights of way and to resist unlawful encroachments on roadside wastes, contains provisions under which, if a district council make default in the discharge of the duties imposed on them by that section on the representation of a parish council, the parish council may petition the county council who may thereupon transfer the powers and duties of the district council under the section to themselves. The like power of complaint is, subject if the parish is grouped to the provisions of the grouping order, given to the parish meeting of a parish not having a separate parish council, by sect. 19 (8).

It has been mentioned that, at common law, the liability for the repair of a highway repairable at public expense is in general upon the inhabitants at large of the parish or other area in which the highway is situate. The circumstance that by statute a highway authority has been established charged with the duty of repairing the highways in any area, does not extinguish the common law liability of the inhabitants of the area in this respect; x and, if a highway in the area that is (1) *Rex v. St. Georgis Hanover M. C.* 131; 57 L. T. 485; 36 W. R.

Square inhabitants) (1812), 3 Camp. 239; 52 J. P. 84; 16 Cox C. C. 222. Cf., *Reg. v. Poole mayor*, 323. 19 Q. B. D. 602, 683; 56 L. J.

56 57 Vict, repairable at public expense is not kept in due repair, the c. 73, s. 13, n. inhabitants of the area may be indicted accordingly. At the present time, however, recourse is practically had to such an indictment only where questions arise as to whether a particular highway is or is not repairable at public expense and in like cases. Under the present Act, by virtue of the definition of the expression "vestry," contained in sect. 75 (2), it seems that where a rural parish is an area liable to maintain its own highways at common law, this common law liability of the inhabitants is transferred to the parish council under sect. 6 (1, a), or, if the parish has not a separate parish council, then, subject if the parish is grouped to the terms of the grouping order, to the parish meeting under sect. 19. The common law liability of the inhabitants of an area other than a rural parish to repair the highways in the area is however unaffected by the Act.

In rural districts important functions in connection with highways attach to the vestry of each highway parish. Where the functions of a highway authority are



transferred to a rural district council by sect. 25, these functions, so far as they are not altogether extinguished, will vest in that council under the provisions of the Public Health Act, 1875, 1 applied to a rural district council by that section. Where, however, the operation of that section is postponed, the functions of the vestry of a highway parish, if the highway parish is a rural parish within the meaning of the present Act, will, during the postponement attach to the parish council by sect. 6 (1, a), or, if the parish has not a separate parish council, then, subject if the parish is grouped to the provisions of the grouping order, to the parish meeting under sect. 19.

The functions of the vestry of a highway parish that is not co-extensive with a rural parish will, where the operation of sect. 25 is postponed, continue to be exercised as heretofore.

It seems proper, since such functions may for a time attach to a parish council or parish meeting, to refer briefly to the more important powers and duties of a vestry in relation to highways. These powers and duties are for the most part conferred and imposed on the vestry by the Highway Act, 1835, 2 most of the provisions of which apply, as has been seen, not only in highway parishes separately maintaining their own highways under a surveyor or surveyors appointed under that Act, but also within highway districts formed under the Highway Acts, 1862 and 1864, where the functions of the surveyor under the earlier Act are discharged by the highway board. 3 As regards the meaning of the expression "vestry" in the Highway Act, 1835, it is provided 4 that wherever anything in that Act " is prescribed to be done by the inhabitants of any (1) 38 39 Vict. c. 55, s. 144, (3) See the Highway Act, 1862 and see ss. 145-148. (25 26 Vict. c. 61), ss. 17, 42.

(2) 5 6 Will. IV. c. 50. (4) 5 6 Will. IV. c. 50, s. 5.

parish in vestry assembled, the same shall be construed to 56 57 Vict, extend to any meeting of inhabitants contributing to the high- c- 73. s-! 3- n, way rates in places where there shall be no vestry meeting." In a highway parish that is also a poor law parish the expression vestry appears to be used in the Act in its ordinary meaning.

Appointment of surveyor. â In a highway parish separately maintaining its own highways under the Highway Act, 1835, 1 the appointment of the surveyor or surveyors is in general made under sect. 6 of that Act. 2 That section provides that the inhabitants of the parish, " at their first meeting in vestry for the nomination of overseers of the poor in every year, shall proceed to the election of one or more persons to serve the office of surveyor in the said parish for the year then next ensuing: provided always, that any outgoing surveyor shall continue to act until his successor shall be appointed, and shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding; and in such case notice of such election shall be given by the chairman to the person elected and to the outgoing surveyor."

The same section also provides for the election of the surveyor or surveyors, in a highway parish where there is no meeting for the nomination of overseers, at a meeting of the inhabitants contributing to the highway rate. A form of notice of election is given in schedule (1) to the Act. If the inhabitants fail to appoint a surveyor, and in the event of a casual vacancy in the office, and in some other cases, the justices may appoint to the office. 3

With regard to the qualification for the office of surveyor, the Act 4 provides that " any person living within the parish or any adjoining parish, and having an estate in houses, lands, tenements, or hereditaments lying within such parish, in his own right or in right of his wife, of the value of, £ 10 by the year, or a personal estate of the value of; £ 100 (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish or within any adjoining parish) of the yearly value of 20, shall be eligible to be elected a surveyor for the purposes of this Act: provided nevertheless, that no person who is now exempted by law from serving the office of overseer of the poor shall be compellable to serve the office of surveyor." Service in the office is compulsory in the case of a qualified person not enjoying an exemption; but the office may be served by deputy. 5

The Act, however, contains other provisions under which the appointment to the office of surveyor may be made. In the first place, the inhabitants of the highway parish assembled (1) 5 6 Will. IV., c. 50. (4) lb. s. 7.

56 57 Vict, as above-mentioned are empowered, 1 instead of appointing a c 73 s- x 3 n- surveyor or surveyors under sect. 6, to elect " any one person of skill and experience " to serve the office at a salary. A form of appointment of a salaried surveyor is given in schedule (2) to the Act. Secondly, two or more highway parishes may at the instance of the vestries of such parishes be united into a district under a common paid surveyor; 2 but in such a district a separate surveyor for each parish must be appointed under sect. 6, to make the highway rate. 3 Lastly, in a highway parish with a population exceeding 5000, the vestry are empowered, by a two-thirds majority, to form a board to serve the office of surveyor, and superintend the highways. 4 Districts and boards, respectively, formed under the above-mentioned provisions, are clearly not, it should be mentioned, " highway districts," or " highway boards," within the meaning of the present Act.

Sects. 6-8 of the Highway Act, 1835, apply, in a highway parish included in a highway district under the Highway Acts, 1862 and 1864, to the election of the waywarden or waywardens; 5 but sects. 9, 10, and 13-19 do not apply in such a parish. 6

Acceptance of liability to repair new highway. â Under sect. 23 of the Highway Act, 1835, 7 a new highway is not to become repairable at the public expense unless the person proposing to dedicate the highway has given notice to the surveyor of his intention so to do, and, after certain preliminaries, has obtained a certificate from the justices to the effect mentioned in the section. And it is provided that on the receipt of the notice, the surveyor " shall call a vestry meeting of the inhabitants of such parish, and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways 8 to be held in and for the division in which the said intended highway shall be situate; and the question as to the utility as aforesaid of such highway shall be determined at the discretion of such justices."

This section applies within a highway district; and further provision under which a road in such a district may be declared a highway repairable at public expense is made by sect. 36 of the Highway Act, 1862, 9 under which, if the inhabitants of a highway parish are desirous of undertaking the repair of any (1) 5 6 Will. IV. c. 50 s. 9. Vict. c. 61), s. 42.

(2) lb. ss. 13, 14, and see ss. 15, (7) 5 6 Will. IV. c. 50, s. 23. 16. (8) The jurisdiction of the justices (3) lb. s. 17. may now be exercised at petty (4) lb. s. 18, and see s. 19. sessions under the Highway Act, (5) See post, p. 120. 1864 (27 28 Vict. c. 101), s. 46.

(6) Highway Act, 1862 (25 26 (9) 25 26 Vict. c. 61, s. 36.

driftway, or any private carriage or occupation road in the 5 6 57 v; ct. parish, in return for the use thereof, the vestry may request c- 73Â S J 3 n-the district surveyor to apply to the justices to declare such road or way to be a highway repairable at public expense.

Amount of highway rate. â Under sect. 29 of the Highway Act, 1835, l the highway rate is not to exceed lod. in the pound at any one time, or 2s. 6d. in the pound in the whole in any one year; but it is provided that " with the consent of four-fifths of the inhabitants of any parish contributing to the highway rate assembled at a meeting specially called for that purpose, ten days previous notice of the same having been given by the surveyor of the said parish, the rate to be levied and iassessed as aforesaid may be increased to such sum as the said inhabitants so assembled may think proper." Whether, however, a meeting of inhabitants under this enactment, is a vestry within the meaning of the present Act is not clear.

There are, it should be mentioned, cases in which the limit imposed on a highway rate by the section above cited may be exceeded without such consent as is there mentioned. 2 The section appears not to apply in a highway parish included in a highway district; but a somewhat similar provision as regards the amount of the rate for the repair of highways in such a highway parish is contained in the Highway Act, 1864. 3

Appointment of collector of highway rate. â Under sect. 36 of the Highway Act, 1835, 4 the consent of the vestry is required to the appointment of a collector of highway rates and the determination of his remuneration. This section applies in a highway parish included in a highway district where a separate highway rate is made. 5

Surveyors' contracts. â By sect. 46 of the same Act 6 the contracts of the surveyor for the purchasing, getting and carrying the materials required for the repair of highways are to be made with consent of the vestry. This section is inapplicable within in a highway district. 7

Taking over of highways repairable by individuals. â Sect. 62 of the same Act 8 contains provisions under which, with the consent of the vestry, a highway repairable by any body politic or corporate, or by any person, may be made repairable at the public expense. This section is practically superseded in highway districts by provisions in the Highway Acts, 1862 and 1864, 9 which enable a similar object to be attained without the consent of the vestry.



Expenses of legal proceedings. â By sect. in of the Highway (1) 5 6 Will. IV. c. 50, s. 29. (6) 5 6 Will. IV., c. 50, s. 46.

(2) lb. ss. 82, III. (7) Highway Act, 1864 (27 28 (3) 27 28 Vict. c. 101, s. 33. Vict. c. 101), s. 20.

(4) 5 6 Will. IV., c. 50, s. 36. (8) 5 6 Will. IV., c. 50, s. 62.

(5) Highway Act, 1864 (27 28 (9) 25 26 Vict. c. 61, s. 35; Vict. c. ioi), s. 31. 27 28 Vict. c. 101, s. 24.

56 57 Vict. Act, 1835, 1 it is provided that if the vestry shall agree to defend c Â 73i s-1 3 n- any indictment found against the parish, or to appeal against any order of justices under the Act, or to defend any appeal, the expenses incurred about such proceedings may, when duly allowed, be charged in the surveyor's accounts. 2

Election of waywardens. â Sect. 10 of the Highway Act, 1862, 3 provides that the waywarden or waywardens for each parish in a highway district shall be elected at the meeting and time and in the manner, and subject to the same qualification and the same power of appointment in the justices in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of surveyor would have been chosen or appointed if the Act had not passed.

Under the present Act 4 the regular elections of waywardens in the spring of 1894 are not to be held, but the waywardens in office at the passing of the Act are to continue in office till the first district councillors come into office. By sect. 84, however, where the operation of sect. 25 is postponed by order of a county council, the order is to make such provisions as may be necessary for holding elections of highway boards during the period of postponement.

Stopping up and diversion of highways, â As is usually expressed by the maxim " once a highway always a highway " the public right of passage over a highway cannot be lost or put an end to unless either the highway ceases to exist owing to natural causes, 5 or the public rights over it are extinguished by or in pursuance of an Act of Parliament. 6

Though the public thus in theory retain their right of way over a highway however long it may have been disused or obstructed, the circumstance that a way has not for a considerable time been used as a highway is prima facie evidence to show that the way is not a highway; 7 so that if a public right of way is suffered to fall into abeyance, it may in course of time become practically impossible to establish its existence; and there is no doubt that in point of fact many public rights of way have in this way been lost.

Stopping up and diversion of highways tinder statute. â The ti) 5 6 Will. IV., c. 50, s. in. (inhabitants) (1854), 23 L. J. M. C.

(2) See *Towfisendv. Read* (1861), 59; 18 Jur. 315; 1 Dears. C. C. 10 C. B. N. S. 308; 30 L. J. 291; 6 Cox, C. C. 299.

M. C. 245; 5 L. T. 180. (6) *Per Byles, J.*, in *Dawes v.*

(3) 25 26 Vict. c. 61, s. IO. *Hawkins* (i860), 8 C. B. (N. S.) (4) See sect. 79 (8). 848, at p. 858; S. C. 29 L. J.

(5) *Per Holroyd, J.*, in *Rex. v. C. P.* 343; 7 Jur. (n. s.) 262; 4 *Montague* (1825), 4 B. C. 598, L. T. 288. The ancient method of at p. 604; and see *Reg. v. Paul*

extinguishing a public right of way (inhabitants) (1840), 2 Moo. Rob. by means of a writ ad quod damnum 307; Reg. v. Bamber (1843), 5 Q. B. is obsolete.

279; 13 L. J. M. C. 13; D. (7) Young v. Cuthbertson (1854),

M. 367; S. C. nom. Bamber v. I Macq. H. L. Ca. 455. Reg., 8 Jur. 309; Reg. v. Hornsea most generally applicable statutory provisions for stopping up 56 57 Vict. and diverting highways are contained in the Highway Act, c 73 s- J 3 n-1835, 1 as amended by subsequent legislation.

Sect. 84 of that Act 2 enacts that " When the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely or reserving a bridle-way or footway along the whole or any part or parts thereof, the chairman of such meeting shall, by an order in writing, direct the surveyor to apply to two justices to view the same, and shall authorise him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act: provided nevertheless, that if any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall, by a notice in writing, require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry, and to submit to them the wish of such person; and if such inhabitants shall agree to the proposal, the said surveyor shall apply to the justices as last aforesaid for the purposes aforesaid; and in such case the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid."

Sect. 85 of the same Act 3 enacts that " When it shall appear upon such view of such two justices of the peace, made at the request of the said surveyor as aforesaid, that any public highway may be diverted and; turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the public, and the owner of the lands or grounds through which such new highway so proposed to be made shall consent thereto by writing under his hand, or if it shall appear upon such view that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice in the form or to the effect of Schedule (No. 19) to this Act annexed in legible characters, at the place and by the side of each end of the said highway from whence the same is proposed to be turned, diverted, or stopped up, either entirely or subject as aforesaid, and also to insert the same notice in one newspaper published or generally circulated in the county where the highway so proposed to be diverted and turned or stopped up, either entirely or subject as aforesaid, (as the case may be), shall lie, for four successive weeks next after the said justices have viewed such public highway, and to affix a like notice on the door of the church of every parish in which such highway so proposed to be diverted, turned, or stopped up, either entirely or subject as aforesaid, or any part thereof, shall lie, (1) 5 6 Will. IV. c. 50, ss. 84 (2) lb. s. 84.

56 57 Vict. on four successive Sundays next after the making: such view; c 73. s- I 3 n- and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new-highway,

by metes, bounds, and admeasurement thereof, which plan shall be verified by some competent surveyor, the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed new highway is nearer or more commodious to the public; and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary; and the said certificate of the said justices, together with the proof and plan so laid before them as aforesaid, shall, as soon as conveniently may be after the making of the said certificate, be lodged with the clerk of the peace for the county in which the said highway is situated, and shall (at the quarter sessions which shall be holden for the limit within which the highway so diverted and turned or stopped up, either entirely or subject as aforesaid, shall lie, next after the expiration of four weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid,) be read by the said clerk of the peace in open court; and the said certificate, together with the proof and plan as aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, shall be enrolled by the clerk of the peace amongst the records of the said court of quarter sessions: provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan so as aforesaid lodged with the said clerk of the peace, and to have a copy thereof, on payment to the clerk of the peace at the rate of sixpence per folio, and a reasonable compensation for the copy of the plan." The remaining sections of the Highway Act, 1835, dealing with the stopping up and diversion of highways provide that in certain cases more than one highway may be included in one order or certificate; 1 enable any person who would be aggrieved by the proposed stopping up or diversion of a highway to appeal to quarter sessions; 2 provide for the making of an order by quarter sessions effecting the proposed stopping up or diversion, and for the repair of the new highway in the case of a diversion: 3 and provide for the stopping up and diversion of highways repairable by particular persons. 4 (1) 5 6 Will. IV. c. 50, s. 86. 13 Vict. c. 45), s. 1.

(2) lb. ss. 87-90; see also the (3) 5 6 Will. IV. c. 50, ss. 91, 92. Quarter Sessions Act, 1849 (12 (4) lb. s. 93.

The Highway Act, 1862, 1 extends the provisions above 5 6 57 Vict, mentioned to roads which are paved, repaired or cleansed under c 73 â s- 3 n-local Acts, subject to certain exceptions.

As regards main roads in rural districts the functions of the surveyor under the above mentioned provisions of the Highway Acts of 1835 and 1862 are now vested in the county council; 2 and the functions of the vestry will, upon the transfer under sect. 25 of the functions of the highway authority to the rural district council, vest in that council. 3

As regards ordinary highways in rural districts the functions both of the surveyor and of the vestry will, upon the transfer of the functions of the highway authority to the rural district council, vest in that council. 3



If the operation of sect. 25 be postponed, the functions of the vestry under the enactments in question will, if the highway parish is co-extensive with a rural parish, vest in the parish council or the parish meeting, as the case may be, under sect. 6 (1, a) or sect. 19; but, if the highway parish is not coextensive with a rural parish, the functions of the vestry will during the postponement be exerciseable as heretofore.

Provisions relating to the diversion and stopping up of highways are contained in the general Acts relating to turnpike roads 4 and in the Inclosure (Consolidation) Act, 1801, 5 but these provisions are practically obsolete.

The Inclosure Act, 1845, 6 enables the valuer acting in the matter of an inclosure under that Act to stop up, divert or alter highways passing through the land to be inclosed or through any old inclosures in the parish or respective parishes in which the land to be inclosed is situate; subject to an appeal to quarter sessions.

The Railway Clauses Act, 1845, also, 7 contains provisions for the stopping up and diversion of highways.

It would seem that the present section is inapplicable in the case of a proposed diversion or stopping up of a highway under either of the two last-mentioned Acts, as the provisions of those Acts apply only where they are brought into operation by a special Act.

The Defence of the Realm Act, 1860, 8 empowers the Secretary of State for War to stop up, divert, or alter highways through or adjoining certain lands. This enactment also is of a special character and would no doubt be held to be unaffected by the present section.

Under the Military Lands Act, 1892, 9 footpaths across or (1) 25 26 Vict. c. 61, s. 44. 9 Geo. IV. c. 77, ss. 8, 9.

(2) Highway Act, 1862 (25 26 (5) 41 Geo. III. c. 109, ss. 8, II. Vict. c. 61), s. 11; Local Govern (6) 8 9 Vict. c. 118, ss. 62-67; merit Act, 1888 (51 52 Vict. as to this Act, see the note to c. 41), s. 11 (I) (12). sect. 6, ante.

(3) See sect. 25 (1) post, and the (7) 8 Vict. c. 20, s. 16. Public Health Act, 1875 (38 39 (8) 23 24 Vict. c. 112, s. 40. Vict. c. 55), s. 144. (9) 55 56 Vict. c. 43, s. 13.

(4) 3 Geo. IV. c. 126, ss. 84-88; 56 57 Vict, inconveniently or dangerously near to any land leased under c- 73. s- 1 3 n- that Act may be stopped up or diverted with the consent of the vestry, and on the certificate of two justices that the footpath to be substituted is convenient for the public; and the provisions of the Highway Act, 1835, are to apply to such a diversion or stopping up with some modifications.

The Church Building Act, 1819, 1 it may be mentioned, contains provisions as to the alteration and discontinuance of footpaths through churchyards.

Declaration that a highway is unnecessary, c. â Sect. 24 of the Highways and Locomotives (Amendment) Act, 1878, 2 enacts that "if any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (in this section referred to as the applicant authority) may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded

with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

"On the day and at the place appointed, the court shall hear any persons objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

"If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate."

The same section provides for the manner in which public notice of the time and place for hearing a case under it shall be given, makes provision for reviving the liability of the public to repair the highway if it subsequently becomes useful, and gives an appeal to quarter sessions against an order of a court of summary jurisdiction made under the section.

Another and somewhat less convenient procedure for declaring a highway in a highway district to be unnecessary is contained in the Highway Act, 1864, 3 Dut that section is practically superseded by the enactment above quoted.

(1) 59 Geo. III. c. 134, s. 39. (3) 27 28 Vict. c. 101, s. 21.

(2) 41 42 Vict. c. 77, s. 24.

A declaration under these enactments that a highway is 56 57 Vict, unnecessary does not have the effect of depriving the public of c- 73 s- 3i n-their right of way, but merely relieves them from the burden of repairing the highway.

Repair of footpaths by the parish council. â It is an act of trespass on the part of a highway authority to place stones, c, upon a highway for the purpose of repairing it, unless the highway is repairable at public expense; 1 and though the present section enables a parish council to spend money on the repair of a footpath which is not repairable by the inhabitants at large, it is open to argument whether it will enable them to repair such a highway against the wish of the owner of the soil. 2

Even in the case of a footpath dating from before the passing of the Highway Act, 1835, 3 there may in particular instances be doubt as to the right of the parish council as against the owner to place stones, c, on the path. It has been held that a highway may be dedicated to the public subject to a right on the owner's part to plough it up, and that in such a case a highway authority are not entitled to execute such repairs to the highway as will interfere with its being so ploughed up. 4 In a recent case, 5 the question was raised whether there might not be a dedication of a footway subject to a right on the owner's part to have the footpath left free from gravel and the like, and in its natural state as a green path across a field; but the point was not decided. Similar questions are likely to arise under the present section.

Sect. 14. â (1.) Where trustees hold any property for Public the purposes of a public recreation ground or of public property and meetings, or of allotments, whether under Inclosure Acts c or otherwise, for the benefit of the inhabitants of a rural parish, or any of them, or for any public purpose connected, with a rural parish, except for

an ecclesiastical charity, they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same.

(2.) Where overseers of a rural parish as such are, either alone or jointly with any other persons, trustees of any parochial charity, such number of the councillors of (1) *Eyre v. New Forest (highway)* (4) *Arnold v. Blaker* (1871), board) (1892), 56 J. P. 517. L. R. 6 Q. B. 433; 40 L. J.

(2) See the note to sect. 3, ante, Q. B. 185; 19 W. R. 1090.

p. 16. (5) *Eyre v. New Forest (highway)* (3) 56 Will. IV. c. 50. board) (1892), 56 J. P. 517.

56 57 Vict, the parish or other persons, not exceeding the number of c 73, s. 14, g overseer trustees, as the council may appoint, shall be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers.

(3.) Where the governing body of a parochial charity other than an ecclesiastical charity does not include any persons elected by the ratepayers or parochial electors or inhabitants of the parish, or appointed by the parish council or parish meeting, the parish council may appoint additional members of that governing body not exceeding the number allowed by the Charity Commissioners in each case; and if the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by such sole trustee and one by the parish council or parish meeting. Nothing in this sub-section shall prejudicially affect the power or authority of the Charity Commissioners, under any of the Acts relating to charities, to settle or alter schemes for the better administration of any charity.

(4.) Where the vestry of a rural parish are entitled, under the trusts of a charity other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment shall be made by the parish council of the parish, or in the case of beneficiaries, by persons appointed by the parish council.

(5.) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects a rural parish, shall, on or before the publication of the notice of the proposal to make an order for such scheme in 23 24 Vict, accordance with section six of the Charitable Trusts Act, c 136. 1860, be communicated to the council of the parish, and where there is no parish council to the chairman of the parish meeting, and, in the case of a council, the council may, subject to the provisions of this Act with respect to restrictions on expenditure, and to the consent of the parish meeting, either support or oppose the scheme, and shall for that purpose have the same right as any inhabitants of a place directly affected by the scheme.

(6.) The accounts of all parochial charities, not being ecclesiastical charities, shall annually be laid before the parish meeting of any parish affected thereby, and the 18 19 Vict. Charitable Trusts Amendment Act, 1855, shall apply c. 124. with the substitution in section forty-four of the parish meeting for the vestry, and of the chairman of the parish 56 57 Vict, meeting for the churchwardens, and the names of



the c- 73. s. 14-beneficiaries of dole charities shall be published annually in such form as the parish council, or where there is no parish council the parish meeting, think fit.

(7.) The term of office of a trustee appointed under this section shall be four years, but of the trustees first appointed as aforesaid one half, as nearly as may be, to be determined by lot, shall go out of office at the end of two years from the date of their appointment, but shall be eligible for re-appointment.

(8.) The provisions of this section with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, shall not apply to any charity until the expiration of forty years from the date of the foundation thereof, or, in the case of a charity founded before the passing of this Act by a donor or by several donors any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors.

(9.) Whilst a person is trustee of a parochial charity he shall not, nor shall his wife or any of his children, receive any benefit from the charity.

Note. Definitions. â The expressions " trustees," " ecclesiastical charity," " parochial charity," and " vestry," are defined in sect. 75 (2).

Recreation grounds and allotments. â Many Acts under which recreation grounds and allotments may be held by trustees for the benefit of parishes are referred to in the note to sect. 6, ante.

Charities in parish not having a separate parish council. â In a parish in this position, the power given by the present section to a parish council of appointing trustees of a charity in place of overseers or churchwardens will, under sect. 19 (5), subject, if the parish is grouped, to the provisions of the grouping order, vest in the parish meeting. By sect. 38 (3), where parishes are grouped, the grouping order is to provide for the application of the provisions of the Act with respect to the appointment of trustees and beneficiaries of a charity, so as to preserve the separate rights of each parish.

Charities in urban districts, c. â Certain provisions with regard to the appointment of charity trustees for parishes in boroughs, urban districts, and London, are contained in sect. 33.

Summary determination of questions as to charity. â By sect. 70 a summary method is provided for determining any question arising under the Act as to the appointment of the 56 57 Vict, trustees or beneficiaries of any charity, or as to the persons in c 73 s- 4 n whom the property of any charity is vested

Saving for eleme? itary schools. â It seems proper to mention, in connection with the present section, that by sect. 66 it is provided that nothing in this Act shall affect the trusteeship, management, or control of any elementary school.

Public or charitable trusts. â The expressions " public " and " charitable " in relation to trusts appear to have in general precisely the same meaning. 1 And no doubt the expression " public purpose " in sub-sect. (1) is used as meaning a purpose that is in law a charitable purpose.

The meaning of " charity " in the legal acceptance of the term, which differs considerably from the popular meaning, is derived from the enumeration of charitable uses contained in the preamble to the statute of 1601, commonly called the Statute

of Charitable Uses; 2 such purposes, and such purposes only, being in point of law charitable as are within either the express words or the spirit of that statute. 3

The purposes enumerated in the preamble are: the relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, the repair of bridges, ports, havens, causeways, churches, seabanks, and highways; the education and preferment of orphans; relief, stock, or maintenance for houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; and the aid or care of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes. A liberal view has however been taken of the spirit of the statute, and many objects differing considerably from those thus enumerated have accordingly been held to be charitable, and practically any question as to whether an object not expressly mentioned in the preamble is charitable depends now entirely on case law. It would probably be impossible to extract from the numerous cases on points of the kind a concise and exhaustive definition of the expression charity in its legal significance. The following brief definition given by (1) See the definition of the ex was kept alive by sect. 13 (2) of presson charity given in Jones that Act, which, after setting out v. Williams (1767?), Amb. 651, the preamble at length and reciting quotedart, p. 129. See also per that "in divers enactments and

Lord Cairns, in *Goodmati v. Saltask* documents reference is made to chari- (mayor, c.) (1882), 7 App. Cas. ties within the meaning, purview and 633, at p. 650; S. C. 52 L. J. interpretation of the said Act,"

Q. B. 193; 48 L. T. 239; 31 W. R. enacts that " references to such charities shall be construed as re- (2) 43 Eliz. c. 4. This statute, ferences to charities within the mean- the substantive provisions of which ing of the said preamble." had long fallen into abeyance, was (3) See per Grant, M. R., in repealed by the Mortmain and Morice v. Durham Bishop) (1804),

Charitable Uses Act, 1888 (51 52 9 Ves. 399, at p. 405. Vict. c. 42); but the preamble

Lord Camden, L. C., 1 may however be mentioned; charity, he 56 57 v 'ct. said, was " a gift to a general public use which extends to the c- 73 s- 4 n. poor as well as to the rich."

Formerly jurisdiction over charities was exercised chiefly by the Court of Chancery.- The Court had in the first place jurisdiction by the construction of the instrument of foundation, with or without evidence of usage and the like, to determine the trusts upon which charity property was held. It had also jurisdiction to enforce the execution of the trusts and to redress breaches of trust. In the exercise of this power the Court would appoint and remove trustees and other officers, and would make all necessary provisions for the regulation and management of the charity and the application of the charity funds.

Where, owing to change of circumstances, the property of an established charity could no longer be applied according to the precise intentions of the founder; or where property was given in such a way as to show a general charitable intention on the part of the founder but it was impossible from the first to carry out his precise intentions,

the Court would direct the property to be applied cy-firs, that is to say, putting it broadly, in such a way as to carry out the intention of the founder as nearly as might be. 3

The Court when called upon to enforce the execution of a charitable trust would usually, both where it was necessary to apply the cy-pres doctrine and in other cases, give general directions for the regulation of the charity, in the form of a scheme settled with the approval of the Court.

The jurisdiction as to charities formerly possessed by the Court of Chancery is now vested in the High Court and is exercised by the Chancery Division. 4 In ordinary cases, however, control over charities is at the present time exercised almost exclusively by the Charity Commissioners under the Charitable Trusts Acts, a brief account of which is subjoined; and proceedings in the High Court in relation to charities are comparatively rare.

The Charitable Trusts Acts, 1853 to 1891, 5 have for their principal object the establishment of " the Charity Commissioners for England and Wales " as a central authority for the (1) *Jones v. Williams* (1767?), *Trusts Act*, 1853 (16 17 Vict. Amb. 651. c. 137), the Charitable Trusts (2) As to the origin of this juris Amendment Act, 1855 (18 19 diction which is involved in some Vict. c. 124), Acts of 1860, 1862, obscurity, see Storey's " *Equity* 1869, and 1887 (23 24 Vict. *Jurisprudence*," 2nd English Edi c. 136; 25 26 Vict. c. 112; 32 lion, Â Â 1142-1154!). 33 Vict. c. no; 50 51 Vict.

(3) See " *Tudor's Charitable c. 49) each of which may be cited Trusts*," Chap. VI. sect. 2. as "the Charitable Trusts Act,"

(4) *Judicature Act*, 1873 (36 with the addition of the year in 37 Vict. c. 66) ss. 16, 34. which it was passed, and the (5) This collective title, under Charitable Trusts (*Recovery*) Act, the *Short Titles Act*. 1892 (55 Vict. 1891 (54 Vict. c. 17)).

10), comprises the Charitable 5,6 57 Vict, control of charities. 1 Before mentioning the powers of the c. 73, s. 14, 0. Charity Commissioners, however, it will be convenient to state the sense in which the expression "charity" is used in the Acts, and to refer to the provisions of the Acts as to the jurisdiction of Courts of law.

The expression "charity" is defined in the Charitable Trusts Act, 1853, 2 as meaning " every endowed foundation and institution taking or to take effect in England or Wales, and coming within the meaning, purview, or interpretation of the statute of the forty-third year of Queen Elizabeth, chapter four, 3 or as to which, or as to the administration of the revenues or property whereof, the Court of Chancery has or may exercise jurisdiction." i A considerable number of charities and institutions are however expressly exempted wholly or partially from the operation of the Act. 5 And the Charitable Trusts Amendment Act, 1855, G provides that in that Act and in the Act of 1853 " the word charity shall include every institution in England or Wales endowed for charitable purposes, but shall not include any charity or institution expressly exempted from the operation of the Act of 1853." A few sections of the Acts extend to charities otherwise exempted from their operation, and provisions are made under which application may be made to have the benefits of the Acts extended wholly or partially to such exempted charities. 7 It should further be mentioned that certain



provisions of the Acts are in abeyance as to charities coming within the operation of the Endowed Schools Acts, 1869 to 1889.

The limited meaning of the word "charity" in the Acts must not be lost sight of in reading the ensuing sketch of their provisions.

The Charitable Trusts Act, 1853, enabled both the ordinary and the special or statutory jurisdiction of the Court of Chancery, with some exceptions, to be exercised, in the case of a charity with a gross annual income exceeding £ 0, and in some instances in the case of a smaller charity, upon application at chambers by certain persons. 9 (1) As to the constitution and the 30th September, 1892. proceedings of the Charity Com (2)' 16 17 Vict. c. 137, s. 66.

missioners, see 16 17 Vict. c. 137, (3) 43 KHZ. c. 4, now repealed.

ss. 1-3, 5-8; 18 19 Vict. c. 124, (4) As to the effect of this detini- ss. 4, 5; 23 24 Vict. c. 136, tion now that the statute of Eliza- ss. 20, 21; 32 33 Vict. c. no, beth is repealed, see note (2) ante, s. 16; 50 51 Vict. c. 49, ss. 2, 3, p. 128.

6; see also the Endowed Schools (5) 16 17 Vict. c. 137, s. 62;

Act, 1874 (37 38 Vict. c. 87), and see 18 19 Vict. c. 124, s. 49; and the City of London Parochial 32 33 Vict. c. no, s. 15. Charities Act, 1883 (46 47 Vict. (6) 18 19 Vict. c. 124, s. 48.

c. 36), s. 3. The two last-men (7) 16 17 Vict. c. 137, s. 64; tioned Acts are partly temporary. 32 33 Vict. c. no, ss. 14, 15-The former Act is at present con (8) As to these Acts see post, tinued in full force by the Expiring p. 138.

Laws Continuance Act, 1893 (5 (9) 16 17 Vict. c. 137, ss. 28, 57 Vict. c. 59). The temporary pro 30,35,37,41-44. visions of the latter Act expired on

The same Act empowered county courts to exercise, on the 56 57 Vict, application of certain persons and subject to the control in c- "3 s:- 4. n-certain respects of the Charity Commissioners, jurisdiction as regards charities with a gross annual income not exceeding a certain limit, afterwards raised to "50, l similar to that which might be exercised by the Court of Chancery on application at chambers;- and gave jurisdiction, similar to and concurrent with that of the Court of Chancery, to the Court of Chancery of the County Palatine of Lancaster as regards charities within the jurisdiction of the latter court.::

The Acts also gave the Courts having jurisdiction over charities certain entirely new powers, among the most important of which were:â powers to make orders vesting charity lands without conveyance in the official trustee of charity lands, or divesting him of land vested in him under such an order, and vesting it in the trustees of the charity; powers to order the transfer of stock, c, belonging to a charity to the official trustees of charity funds, and to authorise such trustees to call for a transfer and to transfer such stock, c.; and powers to order payment to such trustees of any principal moneys of any charity. 4

AVhile provision was thus made for the more effectual control of charities by courts of law, an effectual stop was put to unnecessary legal proceedings in connection with charities by the Charitable Trusts Act, 1853, 5 which rendered the leave of the Charity Commissioners necessary in almost all cases to the institution of legal proceedings affecting charities.

Recourse to county courts in connection with charities is now, it should be mentioned, in view of the judicial powers vested in the Charity Commissioners, more especially under the Charitable Trusts Act, 1860, hardly ever necessary; and the jurisdiction over charities conferred on these courts by the Charitable Trusts Act, 1853, is in consequence very rarely exercised.

The provisions of the Acts as to the powers of the Charity Commissioners and miscellaneous matters may now be briefly summarized.

The Charity Commissioners are empowered to inquire into charities, and to require charity trustees and others to furnish statements and accounts relating thereto."

(1) 23 24 Vict. c. 136, s. 11. 23, 25; 23 & 24 Vict. c. 136, s. 12.

(2) 16 17 Vict. c. 137, s. 32, As to the official trustees, see post, and see ss. 34-45. These sections pp. 132, 133.

also gave jurisdiction over charities (5) 16 17 Vict. c. 137, ss. 17- to district courts of bankruptcy, 19, and see post, p. 132.

but, these courts having been abolished (6) 23 24 Vict. c. 136; as to the provisions of the Charitable Trusts Acts as to their jurisdiction (7) 16 17 Vict. c. 137, ss. 9-15; they were repealed by the Statute 18 19 Vict. c. 124, ss. 6-9; 23

Charitable Trusts Acts as to their jurisdiction (7) 16 17 Vict. c. 137, ss. 9-15; they were repealed by the Statute 18 19 Vict. c. 124, ss. 6-9; 23

Law Revision Act, 1875. 24 Vict. c. 136, s. 19; 32 33 (3) 16 17 Vict. c. 137, ss. 29, Vict. c. no, s. 9. As to the 35 37 accounts of charity trustees, see (4) 16 17 Vict. c. 137, ss. 48 also post, p. 136. 52; 18 19 Vict. c. 124, ss. 12, 56 57 Vict. They are enabled to give advice in relation to charities; c 73 s- '4: n. an (j provision is made indemnifying trustees and others acting in accordance with their advice. 1

They may act as arbitrators in reference to disputes between members of a charity; and their power in this behalf extends to charities otherwise exempted from the Acts. 2

Their leave is necessary to the institution of legal proceedings relating to a charity, 3 except in the cases of "an application in any suit or matter actually pending," a proceeding in which property is claimed or relief sought adversely to a charity, 4 ex officio proceedings by the Attorney-General, 5 or apparently proceedings which prior to the Judicature Act, 1873, could have been brought only in a Court of common law. 6 While the institution of unnecessary proceedings in relation to a charity is thus prevented, the Charity Commissioners are empowered, where they think proceedings ought to be taken, to certify the case to the Attorney-General with a view to his instituting proceedings; ' and, in certain cases, themselves to take proceedings for the recovery of property belonging to a charity. 8

Extensive powers are vested in the Charity Commissioners as to the management of charity property. They have power to authorise and regulate the sale, exchange, letting or mortgage of charity estates, the redemption of rent charges and other periodical payments charged on charity land or on land for the benefit of a charity, the improvement of charity estates, and the application of moneys belonging to a charity or raised on the security of the property thereof to any purpose that they consider beneficial to the charity or estates or objects thereof, and which is not inconsistent with the trusts or intentions of the foundation. Their sanction is in many cases rendered necessary to a sale, mortgage, or lease of charity property. And they are empowered to determine

in certain cases of doubt what lands shall stand charged with a periodical payment in favour of a charity. 9 They may also sanction the compromise of claims relating to charities. 10

The secretary of the Charity Commissioners for the time being is empowered to hold charity lands as a corporation under the style of " the Official Trustee of Charity Lands," and provisions are made under which charity lands may be vested (1) 16 17 Vict. c. 137, s. 16, (7) 16 17 Vict. c. 137, s. 20. and see 32 33 Vict. c. 110, s. 5. (8) 54 Vict. c. 17.

(2) 16 17 Vict. c. 137, s. 64; (9) 16 17 Vict. c. 137, ss. 21, is 19 Vict. c. 124, s. 46. 24-26; 18 cc 19 Vict. c. 124, ss. 29, (3) 16 17 Vict. c. 137, ss. 17, 30, 32-34, 38, 39; 23 24 Vict. 19. c. 136, s. 15; 25 26 Vict. c. 112; (4) lb. s. 17. 32 i: 33 Vict. c. no, ss. 5, 6, 8, 9.

(5) lb. s. 18. (10) 16 17 Vict. c. 137, s. 23; (6) Holmev. ctÂ; (1877), 5 Ch. D. 18 19 Vict. c. 124, s. 31, and see 901; 46 L. J. Ch. 648; 36 L. T. 32 33 Vict. c. no, s. 5. 600; 25 W. R. 547.

in him by an order of a court of competent jurisdiction or of 56 57 Vict. the Charity Commissioners. 1 c- 73. s. 14, n.

Similarly certain officers of the Charity Commissioners are constituted official trustees of charity funds, and provisions are made enabling charity funds to be transferred to them. 2

"The benefits derivable from the constitution of the official trustee of charity lands are, the simplification of title to charity property, and the saving of the heavy and recurring expense of conveyances on each appointment of trustees So little is the ordinary administration of a charity varied by the circumstance that its real estate is so vested, that it is only in the two cases, either of a sale, or of the institution of legal proceedings in respect of the land so vested, that the trustees become practically aware of the fact." 3

"The agency of the official trustees of charitable funds effects two purposes:â

"(1) It secures the absolute safety of capital

"(2) It relieves charities from all expense and delay in obtaining payment of the income when due."

"The official trustees have neither the means nor the power to interfere in the administration of the income, nor in the management of any charities, and their duty in respect of income is confined by statute to remitting (free of charge) as they become due, the dividends and income of the funds standing in their name, to the trustees of each charity, for the purpose of being applied by those trustees to the objects of their trusts." 4

Some of the most important powers of the Charity Commissioners are those conferred on them by the Charitable Trusts Act, 1860, which enacts that, subject to certain provisions, the Charity Commissioners shall have power " to make such effectual orders as may now be made by any judge of the Court of Chancery sitting at chambers, or by any County Court or district court of bankruptcy, for the appointment or removal of trustees of any charity, or for the removal of any schoolmaster or mistress or other officer thereof, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate belonging thereto, or entitling the official trustees of charitable



funds, or any other trustees, to call for a transfer of and to transfer any stock belonging to such estate, or for the establishment of any scheme for the administration of any such charity. 1 ' 5 (1) 16 17 Vict. c. 137, ss. 47- c. 49, ss. 4, 6.

49; 18 19 Vict. c. 124, s. 15, and (3) 29th Report of the Charity see s. 37; 23 24 Vict. c. 136, Commissioners, Appendix, p. 24 n.; s. 2; 50 51 Vict. c. 49, s. 5. See and see 16 17 Vict. c. 137, s. 50; also sect. 52 (4) of the present Act, 18 19 Vict. c. 124, s. 16. and the note to that section, post. (4) 29th Report of the Charily (2) 16 17 Vict. c. 137, ss. 51, Commissioners, Appendix, p. 2311.; 52; 18 19 Vict. c. 124, ss. 12, and see 16 17 Vict. c. 137, s. 52. 18-28, 37; 23 24 Vict. c. 136, (5) 23 24 Vict. c. 136, s. 2; ss. 2, 12, 17, 18, 23; 50 51 Vict. and see ib. ss. 3-7, 10; 25 56 Â 57 Vict. The jurisdiction of the Charity Commissioners for these pur-c. 73, s. 14, n. p OS es can, in the case of a charity the gross annual income of which exceeds 50, be exercised only on the application of the trustees or administrators of the charity, or the majority of them. 1 In the case of smaller charities it may be exercised on the application of the Attorney-General, of all or any one or more of the trustees or persons administering or claiming to administer or interested in the charity in question, or any two or more inhabitants of any parish or place within which the charity is administered or applicable." 2 Provision is made for an appeal against an order of the Charity Commissioners made for any of the above mentioned purposes. 3

It will be observed that the powers of the Charity Commissioners under the Charitable Trusts Act, 1860, are not in any respect more extensive than those possessed by the Courts. They can therefore only vary the trusts of a charity to the extent permissible in accordance with the cy-pres doctrine. The Charitable Trusts Act, 1853, 4 on the other hand, enables them to prepare new schemes for the administration of charities without regard to the limitations of that doctrine, and to submit such schemes in their annual report with a view to the ultimate confirmation thereof by Parliament; but from various causes it has been found impossible to secure the passing of Acts of Parliament for the confirmation of such schemes, and the powers of the Charity Commissioners in this behalf are accordingly seldom if ever exercised. 5

The Charity Commissioners have power, when any parish or ecclesiastical district entitled to the benefit of a charity has been divided and no apportionment of the charity has been otherwise provided for, in case of all charities with a gross annual income not exceeding Â 30, to apportion the benefit of the charity, and to make certain incidental arrangements. 6

They have power to provide a repository for the safe custody of charity muniments; 7 and to refer bills of costs in charity matters to taxation.

Vict. c. 112; 32 33 Vict. c. 1 to, see 16 17 Vict. c. 137, s. 43.

ss. 4-9, 15. As to an order of (3) 23 24 Vict. c. 136, ss. 8, the Charity Commissioners vesting 9; 32 33 Vict. c. HO, ss. 9-11; charity lands in the official trustee, and see post, p. 136.

see also sect. 52 (4) of the present (4) 16 17 Vict. c. 137, ss. 54-

Act, and the note to that section, 60; and see 18 19 Vict. c. 124, post. As to the establishment of a s. 43.

scheme by the Charity Commis (5) See the 37th Report of the sioners, see also, p. 135. With Charity Commissioners, p. 17.

regard to the removal of school (6) is 19 Vict. c. 124, ss. 10, masters and mistresses and other II. 13. 14. Certain provisions as officers of charities, see also 16 to parochial charities in a parish 17 Vict. c. 137, s. 22; 23 24 divided by the present Act, are

Vict. c. 136, ss. 13, 14. contained in sect. 36 (3), post.

(1) 23 24 Vict. c. 136, s. 4; (7) 16 17 Vict. c. 137, s. 53, and see 32 33 Vict. c. no, s. 5. and see 23 24 Vict. c. 136, s. 19.

(2) 23 24 Vict. c. 136, s. 2; and (8) 18 19 Vict. c. 124, s. 40.

The following miscellaneous provisions of the Charitable 56 57 Vict. Trusts Acts remain to be mentioned:â â 73 s. 4i n-

The trustees of any charity whether incorporated or not are empowered to acquire land for the erection or construction of any house or building with or without garden, playground, or other appurtenances, for the purposes of the charity; and for this purpose certain provisions of the Lands Clauses Acts are made available. 1 Deeds relating to charities may be enrolled at the office of the Charity Commissioners, in which case copies of such deeds are receivable in evidence. 2 And the majority of the trustees of a charity are enabled to exercise the powers of the whole body as regards dealings with the charity property and the institution and carrying on of legal proceedings. 3

In connection with the subject of charities, it seems proper to refer briefly to the Endowed Schools Acts, 1869, 1873, and 1874. 4

Under these Acts the Charity Commissioners have special powers to inquire into, and regulate by means of schemes, all kinds of educational endowments, with certain exceptions. Schemes under the Acts require confirmation by the Education Department and by Order in Council; but the powers of the Charity Commissioners in relation to such schemes are not limited by the ey-pres doctrine.

The Acts contain provisions under which endowments, not being educational endowments, but of which the income is applicable wholly or partially to one or more of the purposes followingâ doles in money or kind; marriage portions; redemption of prisoners and captives; relief of poor prisoners for debt; loans; apprenticeship fees; advancement in life; or any purposes which have failed altogether, or have become insignificant in comparison with the magnitude of the endowment, if given to charitable uses in or before 1800â may, with the consent of the governing body of the charity, be rendered applicable by a scheme made under the Acts to the advancement of education. 5

The powers of the Charity Commissioners to make schemes under the Acts are temporary, but are at present continued in force by the Expiring Laws Continuance Act, 1893,â till the 1st March, 1895.

Scheme under the Charitable Trusts Act, 1860.â The powers of the Charity Commissioners to make schemes under this Act ' (1) 16 17 Vict. c. 137, s. 27; and Monmouthshire by the Welsh 18 19 Vict. c. 124, s. 41. Intermediate Education Act, 1889 (2) 18 19 Vict. c. 124, s. 42. (52 cs: 53 Vict. c. 40), with which (3) 32 33 Vict. c. no, ss. 12, they may be cited collectively as 13. the Endowed Schools Acts, 1869- (4) 32 33 Vict. c. 56; 36 37 1889.

Vict. c. 87; 37 38 Vict. c. 87. (5) 32 33 Vict. c. 56, s. 30.

These Acts are amended in impor (6) 56 57 Vict. c. 59.

tant particulars as regards Wales (7) 23 24 Vict. c. 136.

56 lv 57 Vict, have been already referred to. 1 Sec. 6 of the Act 2 provides c. 73, s. 14, n. t hat no order appointing or removing a trustee or establishing a scheme is to be made by the Charity Commissioners before the expiration of one calendar month after public notice of the proposal to make such order has been given; that the notice shall, inter alia, prescribe a reasonable time within which any objections to the proposed order, or suggestions thereon, may be made or transmitted to the Commissioners; and that the Commissioners shall receive and consider all such objections and suggestions.

It does not appear that inhabitants of a place affected by a scheme have any peculiar right to oppose or support it.: i

Accounts of parochial charities. â Under sect. 44 of the Charitable Trusts Amendment Act, 1855, 4 the trustees of every charity are required to make out and transmit to the Charity Commissioners certain annual and other accounts; and the section provides that in the case of a parochial charity the trustees shall, within fourteen days after the day appointed for making out their annual accounts, deliver a copy thereof " to the churchwarden or churchwardens of the parish or parishes with which the objects of such charities are identified, who shall present the same at the next general meeting of the vestry of such parishes, and insert a copy thereof in the minutes of the vestry book; and every such copy shall be open to the inspection of all persons at all seasonable hours, subject to such regulations as to the said Board i. e. the Charity Commissioners may seem fit; and any person may acquire a copy of every such account or of any part thereof, on paying therefor after the rate of twopence for every seventy-two words or figures."

Sect. 45 of the same Act, 5 enables the Charity Commissioners to make orders as to the delivery, transmission, and form of the accounts of charity trustees.

Under the Poor Law Amendment Act, 1834,Â it may be mentioned, the Local Government Board, as successors of the Poor Law Commissioners, have power to call for accounts from persons holding, or in receipt of the rents and profits of, (1) Ante, p. 133. 10 of the Charitable Trusts Act, (2) 23 24 Vict. c. 136, s. 6. 1869 (32 33 Vict. c. no), the (3) Under sect. 8 of the Charit right of appeal appears to be con-able Trusts Act, 1860 (23 24 fined to the Attorney-General or Vict. c. 136), any two inhabitants some person authorised by him or of a paiish or place to which a by the Charity Commissioners. See charity was specially applicable Re Hackney Charities, Ex parte were, in the case of a charity of Nichells (1865), 4 De G. J. S. which the gross income exceeded 8S 5 34 L. J. Ch. 169; n Jur. Â p, empowered to appeal to the (n. s.) 126; 11 L. T. 758; 13 W. R. Court of Chancery against an order 398.

of the Charity Commissioners made (4) 18 19 Vict. c. 124, s. 44.

for the establishment of a scheme (5) lb. s. 45.

regulating the charity or for certain (6) 4 5 Will. IV. c. 76, s. 85. other purposes. Uut now by sect.

any property belonging to a parish, or held in trust for or 56 57 Vict, applicable to the relief of the poor, or which may be applied in c- 73 s- H II-diminution of the poor



rate. And an account furnished in pursuance of this enactment is to be open to the inspection of the owners and ratepayers of the parish.

Sect. 15. A rural district council may delegate to a Delegated parish council any power which may be delegated to a Poor Law Sanitary Authority or parochial committee under the Public Health Acts, and the provisions thereof upon those Acts shall apply as if the parish council were a parochial committee, and where such district council appoint a parochial committee consisting partly of members of the district council and partly of other persons, those other persons shall, where there is a parish council, be or be selected from the members of the parish council.

Note. Parochial committees. The Public Health Act, 1875, contains the following provisions with regard to parochial committees:

"A rural authority including any committee so formed as aforesaid) may, at any meeting specially convened for the purpose, form for any contributory place within their district a parochial committee consisting wholly of members of such authority or committee, or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place, and qualified in such other manner (if any) as the authority forming such parochial committee may determine.

"A rural authority including any committee so formed as aforesaid) may from time to time add to or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee.

"A parochial committee shall be subject to any regulations and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory place for which it is formed, and that no powers shall be delegated to a parochial committee except powers which the rural authority could exercise within such contributory place.

"A parochial committee shall be deemed to be the agents of the authority which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

"A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding (1) 38 39 Vict. c. 55, s. 202. which, by sect. 59, repeals the enact- (2) The words in italics are virtually repealed by the present Act,

The Local Government Act, 1894.

Part 56 57 Vict, c 73, s. 15, n such amount as may be prescribed by such authority; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority."

The Act also authorises the authority appointing a parochial committee to fill casual vacancies occurring among its members.

The following areas are by the same Act- declared to be "contributory places: "

"(1.) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts or of this Act, or of an urban district; and "(2.) Every such special drainage district as aforesaid; and "(3.) In the case of a parish wholly situated in a rural district, and part of which forms or is

part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and " (4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid." As to the formation of special drainage districts the Act, 8 provides that " It shall be lawful for a rural authority, by resolution to be approved by the Local Government Board, but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district, for the purpose of charging thereon exclusively the expenses of works of sewerage water supply or of other works, which by this Act are or by order of the Local Government Board may be declared to be special expenses and thereupon such area shall become a separate contributory place."

It is by no means clear how the present section will apply where parishes and contributory places are not co-extensive.

Complaint by parish council of default of district council.

Sect. 16.â (1.) Where a parish council resolve that a rural district council ought to have provided the parish with sufficient sewers, or to have maintained existing sewers, or to have provided the parish with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or to have enforced with regard to the parish any provisions of the Public Health Acts which it is their duty to enforce, and have failed so to do, (1) 38 39 Vict. c. 55, (2) lb. s. 229.

(3) lb. s. 277.

or that they have failed to maintain and repair any high- 5 6 57 vict-way in a good and substantial manner, the parish council c 73 s ' i(k may complain to the county council., and the county council, if satisfied after due inquiry that the district council have so failed as respects the subject matter of the complaint, may resolve that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council, and they shall be transferred accordingly.

(2.) Upon any complaint under this section the county council may, instead of resolving that the duties and lowers of the rural district council be transferred to them, make such an order as is mentioned in section two hundred and ninety-nine of the Public Health Act, 1875, 38 39 Vict. and may appoint a person to perform the duty mentioned c- Â Â-in the order, and upon such appointment sections two hundred and ninety-nine to three hundred and two of the Public Health Act, 1875, shall apply with the substitution of the county council for the Local Government Board.

(3.) Where a rural district council have determined to adopt plans for the sewerage or water supply of any contributory place within the district, they shall give notice thereof to the parish council of any parish for which the works are to be provided before any contract is entered into by them for the execution of the works.

Note. General duty of district council to exercise their powers. Under the Housing of the Working Classes Act, 1885, x it is "the duty of every local authority entrusted with the execution of laws relating to public health and local government to put in force from time to time as occasion may arise, the powers with which they are invested,

so as to secure the proper sanitary condition of all premises within the area under the control of such authority."

Duty of district council as to provision and maintenance of sewers. â The Public Health Act, 1875, 2 provides that every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of that Act. The expression "local authority" in that Act means urban sanitary authority and rural sanitary authority, 3 and will therefore under the present Act include a rural district council.

Duty of district council as to water supply. â Sanitary authorities have under the Public Health Act, 1875, 4 extensive powers for supplying water within their districts, and it is their duty (1) 48 49 Vict. c. 72, s. 7. (3) lb. s. 4.

(2) 38 39 Vict. c. 55, s. 15. (4) lb. ss. 51-57.

56 57 Vict. to avail themselves of those powers in certain cases under c. 73, s. 16, n. sect 2 gg of that Act, quoted below. 1

A more specific duty as to the supply of water is cast upon rural sanitary authorities by the Public Health Water Act, 1878, 2 which enacts that " it shall be the duty of every rural sanitary authority, regard being had to the provisions in this Act contained, to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house."

Duty of district council as to highways. â The duty of maintaining such highways in their district as are repairable at public expense will fall on rural district councils as successors of the highway authorities under sect. 25.

Transfer of powers, c, of district council to county council. â As to the consequences of such a transfer of powers, see sect. 63.

Proceedings under the Public Health Act on default of local authority. â Sect. 299 of the Public Health Act, 1875, 3 is as follows:â

"Where complaint is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the Local Government Board, if satisfied, after due inquiry, that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default: and any order made for the payment of such expenses and cost may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.



"Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the (1) 38 39 Vict. c. 55, s. 299. (3) 38 39 Vict. c. 55, s. 299.

(2) 41 42 Vict. c. 25, s. 3.

powers of such authority other than (save as hereinafter provided) the powers of levying rates; and the Local Government Board may from time to time by order change any person so appointed."

Sects. 300-302 of the same Act, make further provisions for the recovery of expenses incurred in performing the duty of a defaulting local authority in the manner prescribed by sect. 299, and provide for the raising and discharge of loans for the purpose of meeting such expenses.

Sect. 17. (1.) A parish council may appoint one of their number to act as clerk of the council without office, parish remuneration. documents.

(2.) If no member of the parish council is appointed so to act, and there is an assistant overseer, he, or such one of the assistant overseers, if more than one, as may be appointed by the council, shall be the clerk of the parish council, and the performance of his duties as such shall be taken into account in determining his salary.

(3.) If there is no assistant overseer, the parish council may appoint a collector of poor rates, or some other fit person, to be their clerk, with such remuneration as they may think fit.

(4.) A parish council shall not appoint to the office of vestry clerk.

(5.) When a parish council act as a parochial committee by delegation from the district council they shall have the services of the clerk of the district council, unless the district council otherwise direct.

(6.) The parish council may appoint one of their own number or some other person to act as treasurer without remuneration, and the treasurer shall give such security as may be required by regulations of the county council.

(7.) All documents required by statute or by standing-orders of Parliament to be deposited with the parish clerk of a rural parish shall, after the election of a parish council, be deposited with the clerk, or, if there is none, with the chairman, of the parish council, and the enactments with respect to the inspection of, and taking copies of, and extracts from, any such documents shall apply as if the clerk, or chairman, as the case may be, were mentioned therein.

(8.) The custody of the registers of baptisms, marriages, and burials, and of all other books and documents containing entries wholly or partly relating to the affairs of the church or to ecclesiastical charities, except (1) 38 39 Vict. c. 55, ss. 300-302.

56 57 Vict. documents directed by law to be kept with the public c- 73, s. 17-books, writings, and papers of the parish, shall remain as provided by the existing law unaffected by this Act. All other public books, writings, and papers of the parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as the parish council may direct. The incumbent and churchwardens on the one part, and the parish council on the other, shall have reasonable access to all such books, documents, writings, and papers, as are referred to in this sub-section, and any difference as to custody or access shall be determined by the county council.

(9.) Every county council shall from time to time inquire into the manner in which the public books, writings, papers, and documents under the control of the parish council or parish meeting are kept with a view to the proper preservation thereof, and shall make such orders as they think necessary for such preservation, and those orders shall be complied with by the parish council or parish meeting.

Note. Clerk of parish council. â By sect. 51 (2) an existing vestry clerk in a rural parish, appointed under the Vestries Act, 1850, is to become the clerk of the parish council, notwithstanding that there may be an assistant overseer for the parish.

Vestry Clerk. â In a parish having a population exceeding 2000, where there is an order of the Local Government Board or their predecessors in force authorising the appointment, a vestry clerk is to be appointed by the vestry under sect. 6 of the Vestries Act, 1850. 1 The duties of the vestry clerk, which relate in part to charities and affairs of the church, are prescribed by sects. 7-9 of that Act. 2 The above-mentioned sections of the Vestries Act, 1850, are repealed by the present Act 3 " so far as they relate to parish meetings under this Act." But by sect. 81 (4) an existing vestry clerk will hold office by the same tenure and upon the same terms and conditions as heretofore.

The effect of the provisions of the present Act as to the vestry clerk of a rural parish appears to be that an existing vestry clerk will continue to perform the same duties as heretofore, and will, in addition, act as clerk to the parish council; and that, if the order of the Local Government Board ' or their predecessors authorising the appointment remains in force, the vestry will have the power of making the appointment in future, but that the duties of a vestry clerk appointed in (1) 13 14 Vict. c. 57, s. 6. (3) See sect. 89, and schedule II.

(2) lb. ss. 7-9.

future for a rural parish will be confined to matters relating to 56 57 vic-the affairs of the church and to ecclesiastical charities. c- 73 s- 17 "â

Deposit of documents with the parish clerk. â The standing orders of Parliament relating to private bills provide for the deposit of documents with parish clerks in certain cases. The Parliamentary Documents Deposit Act, 1837, 1 provides that various persons, including parish clerks, with whom documents are directed by the standing orders of Parliament to be deposited, are to receive the same and deal with them in accordance with such orders; and that all persons interested are to be permitted at all reasonable hours of the day to inspect and copy such documents upon payment to the person in whose custody they are, of " one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour. and after the rate of sixpence for every one hundred words copied therefrom."

The Railways Clauses Consolidation Act, 1845- requires certain plans of railway works to be deposited with parish clerks and other persons and applies the provisions of the Parliamentary Documents Deposit Act, 1837, to the documents so deposited. Similar provisions are contained in the Tramways Act, 1870 3 and in other Acts.

Custody of parish documents.â-The Vestries Act, 18 18, 4 provides that vestry books "and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents,

writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct." The Parochial Offices Act, 1861, 5 enables a depository to be provided for parish documents. 6

Many statutes require documents of various kinds relating to a parish to be kept or deposited with the parish books and writings; and such statutes frequently make special provisions as to the inspection and copying of such documents.

By sect. 38 (3) it is provided that where parishes are grouped, the grouping order is to make provisions preserving the separate rights of each parish as to the custody of documents.

Sect. 18. â (1.) A county council may, on application Parish by the parish council, or not less than one tenth of the war(Js-parochial electors of a parish, and on being satisfied that the area or population of the parish is so large, or (1) 7 Will. IV., and 1 Vict. c. S3. (5) 24 25 Vict. c. 125, s. 2.

(2) 8 9 Vict. c. 20, ss. 8, 9. (6) See sect. 6 (1, c. ii.), ol the (3) 33 34 vict c- 7 S s- 6 present Act, and the note to that (4) 58 Geo. III. c. 69, s. 6. section, ante, p. 44.

56 57 Vict, different parts t' the population so situated, as to make a c. 73, s. 18. giggle parish meeting for the election of councillors impracticable or inconvenient, or that it is desirable for any reason that certain parts of the parish should be separately represented on the council, order that the parish be divided for the purpose of electing parish councillors into wards, to be called parish wards, with such boundaries and such number of councillors for each ward as may be provided by the order.

(2.) In the division of a parish into wards regard shall be had to the population according to the last published census for the time being, and to the evidence of any considerable change of population since that census, and to area, and to the distribution and pursuits of the population, and to all the circumstances of the case.

(3.) Any such order may be revoked or varied by the county council on application by either the council or not less than one tenth of the parochial electors of the parish, but while in force shall have effect as if enacted by this Act.

(4.) In a parish divided into parish wards there shall be a separate election of parish councillors for each ward.

Note. Parish 7. ards. â Provisions as to the division of a parish into parish wards before the appointed day are contained in sect. 84 (3).

As to parish meetings for parish wards, see sect. 49.

Provisions Sect. 19.â In a rural parish not having a separate as to small parish council, the following provisions shall, as from the parishes. appointed day, but subject to provisions made by a grouping order, if the parish is grouped with some other parish or parishes, have effect:â (1.) At the annual assembly the parish meeting shall choose a chairman for the year: (2.) The parish meeting shall assemble not less than twice in each year; (3.) The parish meeting may appoint a committee of their own number for any purposes which, in the opinion of the parish meeting, would be better regulated and managed by means of such a committee, and all the acts of the committee shall be submitted to the parish meeting fir their approval: (4.) All powers, duties, and liabilities of the vestry shall, except so far as they relate to the affairs of the church or to ecclesiastical charities, or are transferred by this Act to any other



authorities, be transferred to the parish meeting; c 73 ' b ' 19 ' (5.) The power and the duty of appointing the overseers, and of notifying the appointment, and the power of appointing and revoking the appointment of an assistant overseer, shall be transferred to and vest in the parish meeting, and the power given by this Act to a parish council of appointing trustees of a charity in the place of overseers or churchwardens, shall vest in the parish meeting; (6.) The chairman of the parish meeting and the overseers of the parish shall be a body corporate by the name of the chairman and overseers of the parish, and shall have perpetual succession, and may hold land for the purposes of the parish without licence in mortmain; but shall in all respects act in manner directed by the parish meeting, and any act of such body corporate shall be executed under the hands, or if an instrument under seal is required under the hands and seals, of the said chairman and overseers; (7.) The legal interest in all property which under this Act would, if there were a parish council, be vested on the appointed day in the parish council shall vest in the said body corporate of the chairman and overseers of the parish, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers (if any) as are requisite to give effect to this enactment; (8.) The provisions of this Act with respect to the stopping or diversion of a public right of way, or the declaring of a highway to be unnecessary and not repairable at the public expense, and with respect to a complaint to a county council of a default by a district council, shall apply, with the substitution of the parish meeting for the parish council; (9.) A rate levied for defraying the expenses of the parish meeting (when added to expenses under any of the adoptive Acts) shall not exceed sixpence in the pound in any local financial year; (10.) On the application of the parish meeting the county council may confer on that meeting any of the powers conferred on a parish council by this Act; 56 57 Vict. (11.) Any act of the parish meeting may be signified c 73. s. 19 by an instrument executed at the meeting under the hands, or, if an instrument under seal is required under the hands and seals, of the chairman presiding at the meeting and two other parochial electors present at the meeting.

Note. Parish not having separate parish council â The marginal note to the present section is somewhat misleading. The section will apply not only in the case of a small parish not under a parish council at all, but also, subject to the provisions of the grouping order, in every parish, no matter of what population, which is grouped with any other parish or parishes.

Under sect. 1, an order grouping parishes, or establishing a parish council for a parish with a population under 300, cannot be made without the consent of the parish meeting. No such order can therefore be made as regards any parish till there is a parish meeting for the parish, that is to say, before the appointed day. 1 It follows that in the first instance the present section will apply in its entirety to every parish with a population, according to the census of 1891, 2 of less than 300, and that it will, in the first instance, have no application in the case of a more populous parish.

The county council have very wide powers to provide in a grouping order as to the functions of the parish council of the group and the parish meetings of the several parishes respectively and generally as to the application of the Act in the case." 1 And it will behove the county council to exercise great care, in drawing up a grouping

order, to make adequate provision for all such matters; as the provisions of the Act with regard to the respective functions of the parish council and the several parish meetings where parishes are grouped, as respects matters not provided for by the grouping order, are not by any means clear.

Parish meeting. â With regard to the assembling of the parish meeting, see the note to sect. 2, ante, p. 6.

It is very difficult to see how some of the provisions of the Act as to the powers and duties of the parish meeting of a parish not having a separate parish council will practically work.

Generally speaking an unincorporate bodyâ and the parish meeting is unincorporateâ is incapable of binding itself as a body by contract, of holding property as a body, and of suing or being sued. And although, under sub-sects. (6) and (7), provisions, which however do not seem very adequate, are (1) As to the appointed day, see expression "population" in s. 75 (2). sect. 84 (4). (3) See sects. 3S-40, and the (2) See the definition of the ex- notes to those sections.

made as to the holding of property on behalf of a parish 56 57 Vict, meeting, there is no general provision in the Act conferring on c- 73 s- J 9 a-a parish meeting the capacity of contracting or of suing or being sued. Yet by sub-sect. (10) of the present section a parish meeting may have functions conferred on it to the discharge of which capacities of the kind seem almost essential; and certain sections of the Act x contemplate that in some cases at all events a parish meeting will be bound by contract, and be capable of suing and being sued.

Chairman of parish meeting. â No qualification is expressly required for this office, but it seems to be implied by sub-sect. (n), which speaks of the chairman and two other parochial electors, that the chairman must be a parochial elector of the parish. Seeing that express provisions are made authorising women to hold other offices under the Act, while no such provision is made as regards the office of chairman of a parish meeting appointed under the present section, it may be that a woman will be ineligible for the office. It is remarkable that the provisions of sect. 46, disqualifying various persons for other offices under the present Act, do not apply to the chairman of a parish meeting appointed under the present section.

The first chairman of a parish meeting appointed under the section will, under sect. 78 (3), hold office till April, 1896. Provisions for filling a casual vacancy in the office are contained in sect. 47 (4). And by the first schedule, part i. (10), a temporary chairman may be appointed by a parish meeting if the regular chairman is absent, or unable or unwilling to act.

Transfer of powers, or, of vestry. â-With regard to the effect of a transfer of functions under the present Act, and as to the functions of the vestry, see the note to sect. 6, ante, pp. 28-33. The expressions " affairs of the church " and " ecclesiastical charity " are defined in sect. 75 (2).

Appointment of overseers and assistant overseers, Â c. â As to the appointment, etc., of these officers, see the note to sect. 5, ante.

Appointment of charity trustees. â As to the appointment of trustees of a charity by the parish council in place of overseers or churchwardens, see sect. 14, and the note to that section, ante.

Instrument executed by chairman and overseers. As to how far it is necessary that the contracts of a corporate body should be entered into with due formality, see the note to sect. 3, ante, pp. 13-16.

Parish property. As to the legal interest in parish property, see sect. 5 (2, c), and the note to that section, ante, p. 25.

Highways. As to the functions of the parish meeting in relation to the stopping and diversion of highways, and otherwise as to highways, see sect. 13, and the note to that section.

Complaint to county council. As to a complaint to the county (1) See sects. 53, 67, 88.

56 57 Vict. council of default by a district council, see sects. 16 and 26, c 73 s- '9j "and the notes to those sections.

Expenditure of parish meeting. With regard to the expenditure of local authorities generally, the method of raising funds to defray the expenses of the parish meeting, and the meaning of the expression " local financial year," see sect. n, and the note to that section.

It will be observed that there is a marked difference between the language of sub-sect. (9) of the present section and that of sub-sect. (3) of sect. n, which limits the expenditure of the parish council.

In the first place, for the purposes of the limit on the expenditure of a parish council, expenses under the adoptive Acts are excluded, while in the case of the parish meeting under the present section they are included. Secondly, the parish council may raise a contribution equal to 6d. in the pound on the rateable value of their parish, while the parish meeting are restricted to the amount that a rate of 6d. in the pound will actually produce. The two amounts may obviously differ considerably. 1

A difficulty arises as to the amount that a parish meeting may raise under sub-sect. (9), where the Lighting and Watching Act, 1833, 2 or the Public Libraries Act, 1892, has been adopted. To meet the expenses under these Acts rates are levied at different amounts in the pound on different kinds of property, 4 and it is not clear whether a rate under either of these Acts should, for the purpose of sub-sect. (9), be taken at its higher or lower amount. For example, if a rate at id. in the pound on land, and at d. in the pound on other classes of property, be levied in the parish under the Lighting and Watching Act, it is not clear whether, for the purposes of the parish meeting, another d. in the pound could be levied or only another 3d.

It is difficult also to understand the operation of sub-sect. (9) where the parish is grouped. It can hardly be intended that the parish council, and the parish meeting through their chairman, should each have power to levy rates up to the full limit; as in that case a grouped parish might be saddled with a rate of is. in the pound, or even slightly more, for parochial purposes under the present Act, while in a parish not grouped the rate could only slightly exceed 6d. in the pound.

Instrument executed by chairman and parochial electors. Under the first schedule, part iii. (4), an instrument purporting to be executed in the manner provided by sub-sect. (11) is, until the contrary is proved, to be deemed to have been duly so executed.

(1) See *Ex parte Brown*, Re (2) 3 4 Will. IV. c. 90.

*Liverpool Corporation* (1862), 31 (3) 55 56 Vict. c. 53.



L. J. M. C. 108. (4) See ante, pp. 66, 81.

56 57 Vict, c. 73, s. 20.

## PAET II.

### Guardians and District Councils.

Sect. 20. â As from the appointed day the following Election and provisions shall apply to boards of guardians:â qualification (1.) There shall be no ex-officio or nominated of guardians, guardians: (2.) A person shall not be qualified to be elected or to be a guardian for a poor law union unless he is a parochial elector of some parish within the union, or has during the whole of the twelve months preceding the election resided in the union, or in the case of a guardian for a parish wholly or partly situate within the area of a borough, whether a county borough or not, is qualified to be elected a councillor for that borough, and no person shall be disqualified by sex or marriage for being elected or being a guardian. So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a guardian shall be repealed: (3.) The parochial electors of a parish shall be the electors of the guardians for the parish, and, if the parish is divided into wards for the election of guardians, the electors of the guardians for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward: (4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected: (5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board: (6.) The term of office of a guardian shall be three years, and one third, as nearly as may be, of every board of guardians shall go out of office 56 57 Vict.

c. 73, s. 20. on the fifteenth day of April in each year, and their places shall be filled by the newly elected guardians. Provided as follows:â (a.) Where the county council on the application of the board of guardians of any union in their county consider that it would be expedient to provide for the simultaneous retirement of the whole of the board' of guardians for the union, they may direct that the members of the board of guardians for that union shall retire together on the fifteenth day of April in every third year, and such order shall have full effect, and where a union is in more than one county, an order may be made by a joint committee of the councils of those counties; (b.) Where at the passing of this Act the whole of the guardians of any union, in pursuance of an order of the Local Government Board, retire together at the end of every third year, they shall continue so to retire, unless the county council, or a joint committee of the county councils, on the application of the board of guardians or of any district council of a district wholly or partially within the union, otherwise direct: (7.) A board of guardians may elect a chairman or vice-chairman or both, and not more than two other persons, from outside their own body, but from persons qualified to be guardians of the union, and any person so elected shall be an additional guardian and member of the board.

Provided that on the first election, if a sufficient number of persons who have been ex-officio or nominated guardians of the union, and have actually served as such, are willing to serve, the additional members shall be elected from among those persons.

Note. Guardians. â The provisions of the present section apply in London and in county boroughs, and to all boards of guardians whether elected for a union or for a

single parish, and whether under the general law or local Acts. 1 But sect. 60 (6) contains a saving as to the board of guardians of the Oxford union.

(1) See sect. 30, and the definition s. 100, rendered applicable to the of the expression " guardians" con present Act by sect. 75 (2) and tated in the Local Government cjuoted in the note to that section. Act, 1888 (51 52 Vict. c. 41)

Under sect. 24 (3), guardians as such are not to be elected 56 57 Vict. for a parish or other area in a rural district, but the district c- 73-s- 2 Â n-councillors for such a parish or area are to be the representatives of that parish or area on the board of guardians, and when acting in that capacity are to be deemed to be guardians of the poor.

As to the election of guardians generally, see sect. 48, and the note to that section. As to the first election of guardians under the present Act, the term of office of the guardians elected at the first election, c, see sect. 79.

Qualification for the office. â A difficulty will arise in the case of a rural county district extending into more unions than one; inasmuch as a person may in such a case be qualified to be a district councillor under sect. 24, and yet not qualified to be a guardian for the area he represents on the district council. For example, if there were a rural district comprising two parishes, a and b, and a were in the A union, and b in the B union, a parochial elector of a would be qualified to be a rural district councillor for b, but he would not be qualified to be a guardian for b.

With regard to the nature of a residential qualification, see ante, pp. 8-12.

As to the qualification for election to the office of borough councillor, see sects, n and 12 of the Municipal Corporations Act, 1882. 1 A woman is disqualified for election as borough councillor; 2 and whether a woman who, if she were a man, would be qualified for election as a borough councillor, would thereby be qualified to be a guardian for any parish in the borough under the present section is not clear.

With regard to disqualifications for the office of guardian, see sect. 46, and the note to that section.

Number of guardians, dv.â Sect. 60 contains provisions enabling county and county borough councils to fix and alter the number of guardians or rural district councillors to be elected for the several parishes in a union, to unite and divide parishes for the purposes of such elections, and to make arrangements, where it is necessary, to provide for the retirement of guardians and rural district councillors by thirds. Where a parish is divided by the Act into two or more new parishes, there is, by sect. 79 (2), subject to any order made by the county council, to be one guardian for each of such new parishes. Subject to these provisions, and to any adjustments of area that may be made, any parish or other area at present electing any number of guardians will under the Act elect the same number of guardians, or rural district councillors, as the case may be.

Chairman and vice-chairman. â Further provisions authorising (1) 45 46 Vict. c. 50, ss. 11, (1889), 23 Q. B. D. 79; 58 L. J. 12. Q. B. 316; 61 L. T. 150; 37 (2) Beresford Hope v. Sandhurst W. R. 548; 55 J. P. 805.

The Local Government Act, 1894.

Part 56 57 Vict, the appointment of a chairman and vice-chairman by a board c. 73, s. 20, n. of guardians are contained in sect. 59.

Names of county districts and district councils.

Sect. 21.â As from the appointed day,â (1.) Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts; but nothing in this section shall alter the style or title of the corporation or council of a borough: (2.) For every rural sanitary district there shall be a rural district council whose district shall be called a rural district: (3.) In this and every other Act of Parliament, unless the context otherwise requires, the expression " district council " shall include the council of every urban district, whether a borough or not, and of every rural district, and the expression " county district " shall include every urban and rural district whether a borough or not.

Note. Urban district councils. â By sect. 35 the present part of the Act does not, save where specially provided, apply to a county borough. 1 A county borough, therefore, will not be an urban district, nor its council a district council, within the meaning of the present Act. To put it otherwise, the expressions urban district and county district are not equivalent in meaning to urban sanitary district and sanitary district, but mean respectively an urban sanitary district and a sanitary district other than a county borough; and the expressions "district council" and "urban district council" have corresponding meanings.

A provision preserving the continuity of existence of an urban sanitary authority, notwithstanding its transformation into an urban district council, is contained in sect. 85 (5).

Rural district councils. â Unlike urban district councils, rural district councils are to be new bodies taking their functions from existing authorities by transfer.

Chairman of Sect. 22.â The chairman of a district council unless council to be a woman or personally disqualified by any Act shall be by virtue of his office justice of the peace for the county in which the district is situate, but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate.

justice.

(6) As to county boroughs, see the note to sect. 50 of the Local Government Act, 1888 (51 52 Vict. c. 41) in the Appendix.

Sect. 23. â As from the appointed day, where an urban 5 6 57 v 'ct district is not a boroughâ c 73 ' s- 2 3- (1.) There shall be no ex-officio or nominated members Constitution of the urban sanitary authority: councils (2.) A person shall not be qualified to be elected or to urd an be a councillor unless he is a parochial elector districts not of some parish within the district, or has during being the-whole of the twelve months preceding the borou g ns-election resided in the district, and no person shall be disqualified by sex or marriage for being elected or being a councillor. So much of any enactment whether in a public general or local and personal Act as relates to the qualification of a member of an urban sanitary authority shall be repealed: (3.) The parochial electors of the parishes in the district shall be the electors of the councillors of the district,, and, if the district is divided into wards, the electors of the councillors for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward: (4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected:



(5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board: (6.) The term of office of a councillor shall be three years, and one-third, as nearly as may be, of the council, and if the district is divided into wards one-third, as nearly as may be, of the councillors for each ward, shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly-elected councillors. Provided that a county council may on request made by a resolution of an urban district council, passed by two-thirds of the members voting on the resolution, direct that the members of such council shall retire together on the fifteenth day of April in every third year, and such order shall have full effect.

Note. Urban district councils. With regard to the nature of a residential qualification, see ante, pp. 8-12. Sect 46 con- 56 57 Vict, tains provisions disqualifying certain persons for membership of c- 73; s- 2 3 n- an urban district council. As to the election of urban district councillors generally, see sect. 48, and the note to that section.

And as to the first election, the coming into office, c., of the first district councillors elected under the Act, see sect. 84.

A saving with regard to the Aldershot local board is contained in sect. 59 (6).

Rural Sect. 24. (1.) The district council of every rural district shall consist of a chairman and councillors, and councils. g councl i h ors shall be elected by the parishes or other areas for the election of guardians in the district.

(2.) The number of councillors for each parish or other area in a rural district shall be the same as the number of guardians for that parish or area.

(3.) The district councillors for any parish or other area in a rural district shall be the representatives of that parish or area on the board of guardians, and-when acting in that capacity shall be deemed to be guardians of the poor, and guardians as such shall not be elected for that parish or area.

(4.) The provisions of this Act with respect to the qualification, election, and term of office and retirement of guardians, and to the qualification of the chairman of the board of guardians, shall apply to district councillors and to the chairman of the district council of a rural district, and any person qualified to be a guardian for a union comprising the district shall be qualified to be a district councillor for the district.

(5.) Where a rural sanitary district is on the appointed day situate in more than one administrative county, such portion thereof as is situate in each administrative county shall, save as otherwise provided by or in pursuance of this or any other Act, be as from the appointed day a rural district;

Provided that where the number of councillors of any such district will be less than five, the provisions, so far 38 39 Vict, as unrepealed, of section nine of the Public Health Act, c. 55. 1875, with respect to the nomination of persons to make up the members of a rural authority to five, shall apply, unless the Local Government Board by order direct that the affairs of the district shall be temporarily administered by the district council of an adjoining district in another county with which it was united before the appointed day, and, if they so direct, the councillors of the district shall be entitled, so far as regards those affairs, to sit and act as members of that district council, but a separate account shall be kept of receipts and expenses in respect 5 6 57

Vict, of the district, and the same shall be credited or charged c- 73 s- 24 separately to the district.

(6.) The said provisions of section nine of the Public Health Act, J 875, shall apply to the district council of a rural district to which they apply at the passing of this Act.

(7.) Every district council for a rural district shall be a body corporate by the name of the district council, with the addition of the name of the district, or if there is any doubt as to the latter name, of such name as the county council direct, and shall have perpetual succession and a common seal, and may hold land for the purposes of their powers and duties without licence in mortmain.

Note. Rural district councils. â As to the number, qualification, c, of guardians, see sect. 20, and the note to that section.

Rural district in two counties. â With regard to the power of the county councils interested to deal with cases in which a rural sanitary district is situate in more than one county, or in which a rural sanitary district has less than five elective guardians capable of acting and voting as members of the sanitary authority, see sect. 36, and the note to that section.

The provisions of sect. 9 of the Public Health Act, 1875, I referred to in sub-sects. (5) and (6), with the omission of the portions repealed by the present Act, are as follows:â

"Where the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the Local Government Board may from time to time by order nominate such number of persons as may be necessary to make up that number. and the persons so nominated shall be entitled to act and vote as members of the rural authority but not further or otherwise."

Sect. 25.â (1.) As from the appointed day, there shall Powers of be transferred to the district council of every rural d fc " with district all the powers, duties, and liabilities of the rural resl, ect t to sanitary authority in the district, and of any highway sanitary and authority in the district, and highway boards shall cease highway to exist, and rural district councils shall be the successors matters-of the rural sanitary authority and highway authority, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections one hundred and forty-four to one hundred (1) 38 39 Vict. c. 55, s. 9.

56 57 Vict, and forty-eight of the Public Health Act, 1875, and 38 7 39 V: those sections shall apply in the case of a rural district,7 ' " and of the council thereof in like manner as in the case of an urban district and an urban authority. Provided that the council of any county may by order postpone within their county or any part thereof the operation of this section, so far as it relates to highways, for a term not exceeding three years from the appointed day or such further period as the Local Government Board may on the application of such council allow.

(2.) Where a highway repairable ratione tenurae appears on the report of a competent surveyor not to be in proper repair, and the person liable to repair the same fails when requested so to do by the district council to place it in proper repair, the district council may place the highway iu proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.

(3.) Where a highway authority receives any contribution from the county council towards the cost of any highway under section eleven, sub-section (10), of the 51 52 Vict, Local Government Act, 1888, such contribution may c- 41 be made, subject to any such conditions for the proper maintenance and repair of such highways, as may be agreed on between the county council and the highway authority.

(4.) AWhere the council of a rural district become the highway authority for that district, any excluded part of a parish under section two hundred and sixteen of the Public Health Act, 1875, which is situate in that district, shall cease to be part of any urban district for the purpose of highways, but until the council become the highway authority such excluded part of a parish shall continue subject to the said section.

(5.) Rural district councils shall also have such powers, duties, and liabilities of urban sanitary authorities under the Public Health Acts or any other Act, and such provisions of any of those Acts relating to urban districts shall apply to rural districts, as the Local Government Board by general order direct.

(6.) The power to make such general orders shall be in addition to and not in substitution for the powers conferred on the Board by section two hundred and seventy-six of the Public Health Act, 1875, or by any enactment applying that section; and every order made by the Local Government Board under this section shall be forthwith laid before Parliament.

(7.) The powers conferred on the Local Government 5 6 57 vi ct. Board by the said section two hundred and seventy-six, c- 73, s 2 5-or by any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish on the application of the parish council of that parish.

Note. Transfer of powers, duties and liabilities. â Definitions of the several terms "powers," "duties," and " liabilities," and of the expression " powers, duties, and liabilities," applicable to the interpretation of the Act will be found in the note to sect. 75.

Sect. 67 provides for the manner in which, where powers and duties are transferred from one authority to another, property, debts, and liabilities connected with such powers and duties shall also be transferred. By sect. 70 provision is made for the summary determination of any question as to whether any functions are transferred by or under the Act to a district council, or as to whether any property is or is not vested in a district council. Sects. 85-88 contain savings for pending legal proceedings, existing debts, securities, contracts, bye-laws, and the like. And by sect. 86 (2) it is made the duty of every authority, whose functions are transferred by the Act, to liquidate as far as practicable, before the appointed day, all current debts and liabilities incurred by such authority.

Powers, c, of district council as to highways. â A general sketch of the scheme of the present Act as to highways will be found in the note to sect. 13, ante, where a list is given of the various kinds of highway authorities. Sect. 144 of the Public Health Act, 1875, x invests an urban sanitary authority not only with the functions of surveyors of highways, but also with all the functions of the vestry under the Highway Act, 1835, 2 and the amending Acts. The effect of the present section will, therefore, be to transfer to a rural district council not only the functions of the highway authorities within their district, but also the functions of the vestries of the several highway parishes. It is to



be observed that the functions of a district council as to highways in different parts of their district may differ, according as such parts of the district may on the appointed day have been under one kind of highway authority or another.

Postponement of operation of section as regards highways. â Certain provisions with regard to the effect of an order of a county council postponing the operation of the present section as regards highways are contained in sects. 82 (2) and 84.

Sect. 26.â (1.) It shall be the duty of every district Duties and council to protect all public rights of way, and to prevent powers of as far as possible the stopping or obstruction of any such Council as (1) 38 39 Vict. c. 55, s. 144. (2) 5 6 Will. IV. c. 50.

The Local Government Act, 1894.

Part 56 57 Vict. c. 73, s. 26.

to rights of way, rights of common, and roadside wastes.

39 40 Vict. c. 56.

right of way, whether within their district or in an adjoining district in the county or counties in which the district is situate, where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district, and to prevent any unlawful encroachment on any roadside waste within their district.

(2.) A district council may with the consent of the county council for the county within which any common land is situate aid persons in maintaining rights of common where, in the opinion of the council, the extinction of such rights would be prejudicial to the inhabitants of the district; and may with the like consent exercise in relation to any common within their district all such powers as may, under section eight of the Commons Act, 1876, be exercised by an urban sanitary authority in relation to any common referred to in that section; and notice of any application to the Board of Agriculture in relation to any common within their district shall be served upon the district council.

(3.) A district council may, for the purpose of carrying into effect this section, institute or defend any legal proceedings, and generally take such steps as they deem expedient.

(4.) Where a parish council have represented to the district council that any public right of way within the district or an adjoining district in the county or counties in which the district is situate has been unlawfully stopped or obstructed, or that an unlawful encroachment has taken place on any roadside waste within the district, it shall be the duty of the district council, unless satisfied that the allegations of such representation are incorrect, to take proper proceedings accordingly; and if the district council refuse or fail to take any proceedings in consequence of such representation, the parish council may petition the county council for the county within which the way or waste is situate, and if that council so resolve the powers and duties of the district council under this section shall be transferred to the county council.

(5.) Any proceedings or steps taken by a district council or county council in relation to any alleged right of way shall not be deemed to be unauthorised by reason only of such right of way not being found to exist.

(6.) Nothing in this section shall affect the powers of the county council in relation to roadside wastes.

(7.) Nothing in this section shall prejudice any powers 5 6 57 Vict, exerciseable by an urban sanitary authority at the passing of: "3. s- 26-of this Act, and the council of every county borough shall have the additional powers conferred on a district council by this section.

Note. Roadside wastes. â The language of the present section might easily lead to misconception of the law with regard to roadside wastes. It seems to suggest that any enclosure of a roadside waste, whether a highway is thereby obstructed or not, is an infringement on the rights of the public and is accordingly unlawful. Such is not the case. The owner of waste land at the side of, but not forming part of, a highway is entitled to deal with it as freely as with any other land belonging to him. A strip of waste land at the side of a road may, however, form part of the highway, and in that case any person, whether owner of the soil or not, who encroaches on it, obstructs the highway, and is liable to criminal proceedings accordingly.

Whether a strip of waste at the side of a road is part of the highway or not is a question of fact to be decided with due regard to the evidence in each case. With regard to the presumption where there is no positive evidence, Martin, B., directed a jury as follows:â " In the case of an ordinary highway, although it may be of a varying and unequal width, running between fences one on each side, the right of passage or way prima facie, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the use of the entire of it as the highway, and are not confined to the part which may be metalled or kept in repair for the more convenient use of carriages or foot-passengers." A new trial was afterwards moved for on the ground of misdirection, but was refused; and Crompton, J., delivering the judgment of the Court, said that the direction seemed to the Court very proper, and he added:â " It was said that that would apply to cases where there is a highway open to a considerable green sward or land which may be enclosed by the lord of the manor, if connected with the waste, or by the land-owner, if it belongs to the land-owner, and that the direction to the jury would take in a place of that kind which is really not a part of the highway. But I own it strikes me that my Brother Martin guards carefully against that. He speaks of an ordinary highway running between fences." x

The provision in sub-sect. (6) relates to roadside wastes at the sides of main roads. 2 (1) Reg. v. United Kingdom Elec Act, 1888 (51 52 Vict. c. ai), *trie Telegraph Co.* (1862), 9 Cox C. C. s. II; and see also *Curtis v. Kest*-137, 174; 31 L. J. M. C. 166; 6 even comity council) (1890), 45 L. T. 378; 8 Jur. (n. s.) 1153; 10 Gh. D. 504; 60 L. T. Ch. 103; 63 W. R. 538. L. T. 543; 39 W. R. 199.

(2) See the Local Government

The Local Government Act, 1894.

Part 56 57 Vict, c. 73, s. 26, n,

Transfer of certain powers of justices to district councils.

Commons. â Under sect. 5 of the Commons Act, 1876, 1 an urban authority are, in certain cases, entitled to appear at a local inquiry ' held with regard to a proposal under the Inclosure Acts for the inclosure or regulation of a common in, or in the neighbourhood of, their district; are enabled themselves in certain cases to apply for a provisional order for the regulation of such a common; and are empowered to take

various steps with a view to securing the benefit of the common to the inhabitants of their district. A brief sketch of the procedure for the inclosure or regulation of a common under the Inclosure Acts will be found, ante, p. 51.

Transfer of powers, etc., of district council to county council. â With regard to the consequences of such a transfer, see sect. 63.

Sect. 27. â (1.) As from the appointed day the powers, duties, and liabilities of justices out of session in relation to any of the matters following, that is to say,â (a) the licensing of gang masters; (I) the grant of pawnbrokers' certificates the licensing of dealers in game the grant of licenses for passage brokers and emigrant runners; (e) the abolition of fairs and alteration of days for holding fairs; () the execution as the local authority of the Acts relating to petroleum and infant life protection; when arising within a county district, shall be transferred to the district council of the district.

(2.) As from the appointed day, the powers, duties, and liabilities of quarter sessions in relation to the licensing of knackers' yards within a county district shall be transferred to the district council of the district.

(3.) All fees payable in respect of the powers, duties, and liabilities transferred by this section shall be payable to the district council.

Note. Transferred powers. â The enactments relating to the powers and duties transferred by the present section to district councils, with the exception of the Acts relating to petroleum, will be found in the second Appendix, post. The Acts relating to petroleum 2 have been omitted from the present work partly on account of their considerable length, and partly because, in view of the fact that urban sanitary authorities in most cases already act as local authorities in the execution of (1) 39 40 Vict. c. 56, s. 8.

(2) The Petroleum Act, 1871 (34 35 Vict- c- 10 5) the Petroleum Act, 1879 (42 43 Vict- c. 47), and the Petroleum (Hawkers') Act, 1881 (44 45 Vict- c. 67).

their provisions, they are included in the standard text books 56 57 Vict. on the law relating to public health. 1 c 73. s. 27, 11.

By sect. 32 the present section applies to a county borough as if it were an urban district and the borough council were the district council.

Sect. 28. â The expenses incurred by the council of an Expenses urban district in the execution of the additional powers j js 11 conferred on the council by this Act shall, subject to the coun J, provisions of this Act, be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execu- 38 39 Vict. tion of the Public Health Act, 1875. c- 55-

Sect. 29.â The expenses incurred by the council of a Expenses of rural district shall, subject to the provisions of this Act, â â c J strict be defrayed in manner directed by the Public Health Act, 1875, with respect to expenses incurred in the execution of that Act by a rural sanitary authority, and the provisions of the Public Health Acts with respect to those expenses shall apply accordingly. Provided as follows:â (a.) Any highway expenses shall be defrayed as general expenses: (.) When the Local Government Board determine any expenses under this Act to be special expenses and a separate charge on any contributory place, and such expenses would if not separately chargeable on a contributory place be raised as general expenses, they may further



direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in section two hundred and thirty of the Public Health Act, 1875: 38 39 Vict- (c.) A district council shall have the same power of c 5 â charging highway expenses under exceptional circumstances on a contributory place as a highway board has in respect of any area under section seven of the Highways and Locomotives 41 42 Vict. (Amendment) Act, 1878: Â-? 7- (d.) Where highway expenses would, if this Act had not passed, have been in whole or in part defrayed in any parish or other area out of any property or funds other than rates, the district council shall make such provision as will give (1) See Glen's " Law of Public Health."

56 57 Vict. to that parish or area the benefit of such c. 73, s. 29. property or funds by way of reduction of the rates on the parish or area.

Note. Highway expenses. â Sect. 7 of the Highways and Locomotives (Amendment) Act, 1878, 1 provides that "if a highway board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority or authorities 2 of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts, and charge exclusively on each of such parts the expenses payable by such highway board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes."

It is submitted that, where under this enactment as applied by sub-clause (c) of the present section a district council charge highway expenses on a contributory place, such expenses must be paid as part of the contribution of the place to the general expenses of the district council, and not as special expenses, and will therefore ultimately fall on the poor rate and not on a separate rate under sect. 230 of the Public Health Act, 1875. 3

Sect. 82 (1) contains provisions under which, where the control of a highway in a highway parish is transferred to the district council by the present Act, the expenses of putting the highway into proper repair in the first instance may, in certain cases, be charged on such highway parish.

Guardians in Sect. 30. â The provisions of this Part of this Act

London and respecting guardians shall apply to the administrative boroughs county of London and to every county borough.

Provisions Sect- 31.â (1.) The provisions of this Act with respect as to London to the qualification of the electors of urban district vestries and councillors, and of the persons to be elected, and with district respect to the mode of conducting the election, shall apply as if members of the local board of Woolwich and the vestries elected under the Metropolis Management

Acts, 1855 to 1890, or any Act mending those Acts, and the auditors for parishes elected under those Acts, and so far as respects the qualification of persons to be elected as if members of the district boards under the said Acts, were urban district councillors, and no person shall, ex (1) 41 42 Vict. c. 77, s. 7. Act, 1888 (51 52 Vict. c. 41) s. 3 (2) The county councils are now (viii).

the county authorities under the (3) 38 39 Vict. c. 55, s. 230.

Act; see the Local Government Act, 1885, be chairman of any of the said vestries. Provided 56 57 Vict. that the Elections (Hours of Poll) Act, 1885, shall apply c. 73, s. 31. to elections to the said vestries. 48 Vict-c-10- (2.) Each of the said vestries, except those electing district boards, and each of the said district boards and the local board of Woolwich, shall at their first meeting-after the annual election of members elect a chairman for the year, and section forty-one of the Metropolis Management Act, 1855, shall apply only in case of the absence c. 120. of such chairman, and the provisions of this Act with respect to chairmen of urban district councils being-justices shall apply as if the said vestries and boards were urban district councils.

(3.) Nothing in any local or personal Act shall prevent any vestry in the county of London from holding their meeting at such time as may be directed by the vestry.

Note. Metropolitan vestries, & With regard to elections under the present Act generally, see sect. 48, and the note to that section. With regard to the first elections to be held under the Act, and the coming into office of persons then elected, see sect. 79. By sect. 48 (4) Metropolitan vestries under the Metropolis Management Acts and the local board of Woolwich are assimilated to district councils in certain further respects.

The Elections (Hours of Poll) Act, 1885 1 which applies to the elections referred to in the present section, but not to any other elections under the Act, requires the poll, at elections to which that Act applies, to be kept open from 8 a. m. to 8 p. m. and no longer.

Sect. 32. The provisions of this Part of this Act respecting the powers, duties, and liabilities of justices out to county of session, or of quarter sessions, which are transferred to a district council, shall apply to a county borough as if transfer of it were an urban district, and the county borough council justices' were a district council. powers.

Sect. 33. (1.) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other Act to urban district, make an order conferring on that council districts and or some other representative body within the borough or London, district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto.

(1) 48 Vict. c. 10.

The Local Government Act, 1894.

Part 56 57 Vict, c- 73. s. 33-

Supplemental provisions as to control of overseers in urban districts.

(2.) Where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough (including a county borough) or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the

charity are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on the nomination of the councillors elected for the ward or wards comprising such parish or any part of the parish.

(3.) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect.

(4.) The order shall not alter the incidence of any rate, and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers.

(5.) An order under this section may also be made on the application of any representative body within a borough or district.

(6.) The provisions of this section respecting councils of urban districts shall apply to the administrative county of London in like manner as if the district of each sanitary authority in that county were an urban district, and the sanitary authority were the council of that district.

(7.) The Local Government Board shall consult the Charity Commissioners before making any order under this section with respect to any charity.

Note. Appointment of charity trustees. â Sub-sect. (2) appears to refer to cases in which the power of a parish council to appoint trustees of a parochial charity under sect. 14 has been conferred on a borough council or urban district council under sub-sect. (1) of the present section. It is curious that it is confined to cases where the council in question happen to have the power of appointing the majority of the trustees.

Sect. 34.â Where an order of the Local Government Board under this Act confers on the council of an urban district, or some other representative body within the district, either the appointment of overseers and assistant overseers or the powers, duties, and liabilities of overseers, that order or any subsequent order of the Board may confer on such council or body the powers of the vestry 56 57 v ict. under the third and fourth sections of the Poor Rate c?3 s- 34-Assessment and Collection Act, 1869. 32 33 Vict.

Note. Rating of small tenements. â The enactments referred to in the present section are set out, ante, pp. 29, 30.

It is to be observed that the present section does not extend to a county borough or to London.

Sect. 35.â Save as specially provided by this Act, this Restrictions Part of this Act shall not apply to the administrative â n applica-county of London or to a county borough. toâ London

The Local Government Act, 1894.

Part 56 57 Vict, c. 73, s. 36.

Duties and powers of county council with respect to areas and boundaries.

PART III.

AlleAS AND BouNDAIES.

Sect. 36.â (1.) For the purpose of carrying this Act into effect in the case ofâ (a.) every parish and rural sanitary district which at the passing of this Act is situate partly



within and partly without an administrative county; and (5.) every parish which at the passing of this Act is situate partly within and partly without a sanitary district; and (c) every rural parish which has a population of less than two hundred; and (d.) every rural sanitary district which at the passing of this Act has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district; and (e.) every rural parish which is co-extensive with a rural sanitary district; every county council shall forthwith take into consideration every such case within their county, and whether any proposal has or has not been made as mentioned in 51 52 Vict, section fifty-seven of the Local Government Act, 1888, c. 41. shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given, and make such orders, if any, as they deem most suitable for carrying into effect this Act in accordance with the following provisions, namely:â (i.) the whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county; (ii.) the whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district; and (iii.) every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts.

(2.) Where a parish is at the passing of this Act situate 5 6 57 Vict. in more than one urban district, the parts of the parish c- 7 3 s- 3 6-in each such district shall, as from the appointed day, unless the county council for special reasons otherwise direct, and subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the 39 40 Vict, same. c. 61.

(3.) Where a parish is divided by this Act, the county council may by order provide for the application to different parts of that parish of the provisions of this Act with respect to the appointment of trustees or beneficiaries of a charity and for the custody of parish documents, but the order, so far as regards the charity, shall not have any effect until it has received the approval of the Charity Commissioners.

(4.) Where a rural parish is co-extensive with a rural sanitary district, then, until the district is united to some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council shall, in addition to their own powers, have the powers of, and be deemed to be, the parish council.

(5.) Where an alteration of the boundary of any county or borough seems expedient for any of the purposes mentioned in this section, application shall be made to the Local Government Board for an order under section fifty-four of the Local Government Act, 1888.

(6.) Where the alteration of a poor law union seems expedient by reason of any of the provisions of this Act, the county council may, by their order, provide for such alteration in accordance with section fifty-eight of the Local Government Act, 1888, or otherwise, but this provision shall not affect the powers of the Local Government Board with respect to the alteration of unions.

(7.) Where an order for the alteration of the boundary of any parish or the division thereof, or the union thereof or of any part thereof, with another parish is proposed to be made after the appointed day, notice thereof shall, a reasonable time before it is made, be given to the parish council of that parish, or if there is no parish council, to the parish meeting, and that parish council or parish meeting, as the case may be, shall have the right to appear at any inquiry held by the county council with reference to the order, and shall be at liberty 56 57 Vict, to petition the Local Government Board against the c- 73 s. 36. confirmation of the order.

(8.) Where the alteration of the boundary of any parish, or the division thereof or the union thereof or of part thereof with another parish, seems expedient for any of the purposes of this Act, provision for such alteration, division, or union may be made by an order of the county council confirmed by the Local Government Board under 51 52 Vict, section fifty-seven of the Local Government Act, 1888.

c- 41 (9.) Where a parish is by this Act divided into two or more parishes, those parishes shall, until it is otherwise provided, be included in the same poor law union in which the original parish was included.

(10.) Subject to the provisions of this Act, any order made by a county council in pursuance of this Part of this Act shall be deemed to be an order under section fifty-seven of the Local Government Act, 1888, and any board of guardians affected by an order shall have the same right of petitioning against that order as is given by that section to any other authority.

(11.) Where any of the areas referred to in section fifty-seven of the Local Government Act, 1888, is situate in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situate in two or more counties, a joint committee appointed by the councils of those counties shall, subject to the terms of delegation, be deemed to have and to have always had power to make orders under that section with respect to that area; and where at the passing of this Act a rural sanitary district or parish is situate in more than one county, a joint committee of the councils of those counties shall act under this section, and if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee. Provided that any question arising as to the constitution or procedure of any such joint committee shall, if the county councils concerned fail to agree, be determined by the Local Government Board.

(12.) Every report made by the Boundary Commis- 50 51 Vict, sioners under the Local Government Boundaries Act, c. 61. 1887, shall be laid before the council of any administra- tive county or borough affected by that report, and before any joint committee of county councils, and it shall be the duty of such councils and joint committees to take such reports into consideration before framing any order under the powers conferred on them under 5 6 57 Vict, this Act. Cl 7j ' b ' Å 6 ' (13.) Every county council shall, within two years after the passing of this Act, or within such further period as the Local Government Board may allow either generally or with reference to any particular matter, make such orders under this section as they deem necessary for the purpose of bringing this Act into operation, and after the expiration

of the said two years or further period the powers of the county council for that purpose shall be transferred to the Local Government Board, who may exercise those powers.

Note. Areas and boundaries. â Observations will be found later in the note to the present section on the existing boundaries of parishes, 1 unions, 2 urban sanitary districts including boroughs, 3 and rural sanitary districts. 4 With regard to county boundaries, see sect. 50 of the Local Government Act, 1888, 5 and the note to that section in the Appendix.

The definitions governing the meanings of the expressions " parish," and " poor law union," for the purposes of the present Act are referred to post, on pp. 177 and 184 respectively. The expression "administrative county," under a definition contained in the Local Government Act, 1888, 6 and incorporated with the present Act by sect. 75 (1), " means the area for which a county council is elected. but does not (except where expressly mentioned) include a county borough." The expressions " county " and " county council" are defined in sect. 75 (2), post, as including a county borough, and the council of a county borough, respectively. This definition of " county " is imperfect, but h is clear that the expression is, in the present section, used as meaning an administrative county or county borough. It is to be observed that, by virtue of sub-sect. (n), the expression "county council" in the present section practically, in many cases, includes not only a council of an administrative county or of a county borough, but also a joint committee of such councils. With regard to county boroughs, see the note to sect. 50 of the Local Government Act, 1888, 7 in the Appendix, where a list of such boroughs is given.

The sections of the Local Government Act, 1888, 8 referred to in the present section, together with certain other sections of that Act relating to boundaries, will be found in the Appendix.

Sect. 83, post, makes it the duty of every county council to (1) See post, pp. 177-184. (5) 51 52 Vict. c. 41, s. 50.

(2) See post, p. 184. (6) lb. s. 100.

(3) See post, pp. 184, 185. (7) lb. s. 50.

(4) See post, p. 185. (8) lb. ss. 54, 57, 56 57 Vict, exercise their powers for the purpose of bringing the Act into c 73. s- 3 6 n- operation as soon as possible, and empowers a county council to delegate their powers under the Act to a committee.

And sect. 84 (3) provides that every division into wards or alteration of the boundaries of any parish, or union, or district, which is to affect the first election shall, if parishes or parts for which the registers of parochial electors will be made are affected, be made, so far as practicable, before the 1st July, 1894.

Parish partly within and partly without an administrative county. â The Act does not itself sub-divide a parish in this position unless, as is frequently the case, the boundary of the administrative county at the place in question is also the boundary between sanitary districts.

Rural sanitary district partly within and partly without an administrative county. â A rural sanitary district in this position will, unless dealt with by the county councils interested, be automatically divided, as from the appointed day, by sect. 24 (5); and if a part of a rural sanitary district so constituted a separate county district will have



less than five district councillors it will be subject to the provisions made by that sub-section to meet such a case.

Parish partly within and partly without a sanitary district. â A parish in this position will, in general at all events, unless the case is dealt with in the meantime, be automatically divided as from the appointed day, by sect. 1 (3), or sub-sect. (2) of the present section. The only case where it is not clear that such a sub-division will be effected by the Act is where a parish was, at the passing of the Act, partly within a county borough and partly within a neighbouring urban sanitary district. Whether a sub-division of a parish in such a position will be effected by the Act depends upon the meaning of the expression "urban district" in sub-sect. (2) of the present section. Under sect. 21, as is pointed out in the note to that section, urban sanitary districts other than county boroughs alone will, after the appointed day, be termed "urban districts." But sub-sect. (2) has reference to the date of the passing of the Act, at which date sect. 21 had not come into operation, and there were no "urban districts" under that section. It may therefore be fairly argued that the expression "urban district" in sub-sect. (2) means urban sanitary district, and therefore includes a county borough.

Rural parish with a population under two hundred. â The object with which a county council are to take such a case into consideration is not clearly pointed out. Probably it is intended that the county council are to consider the advisability of grouping the parish, or establishing a parish council for it, so as to have a plan in readiness to suggest to the parish meeting as soon as the parish meeting for the parish comes into existence. It is remarkable that though it is only for a rural parish with a population of three hundred or upwards that a parish council is established by the Act, the county 56 57 Vict. council are only required by sub-sect. (1, c) of the present c-23â s 3 6 n-section to consider cases where the population of the parish is under two hundred. 1

Rural sanitary district with less than five elective guardians capable of acting on the sanitary authority. â If a case of this kind is not dealt with there will be less than five elected district councillors for the district under the present Act, and under sect 24 (6), sect. 9 of the Public Health Act, 1875, 2 so far as unrepealed, will apply to the case and the Local Government Board will be able to nominate a member or members of the district council accordingly so as to bring the number of members up to five; see the note to sect, 24, ante.

Parish co-extensive with rural sanitary district. â If a case of this kind is not dealt with there will, under sub-sect. (4), unless the county council otherwise direct, be no separate parish council for the parish, but the district council will act as parish council.

Procedure with regard to alterations of area. â The procedure under sect. 57 of the Local Government Act, 1888, 3 was, by that Act, in some respects to be prescribed by the Local Government Board. 4 And in 1889 that Board accordingly issued certain regulations under the section which will be found in the note to the section in the Appendix. Under sect. 80 (2) of the present Act, however, the Local Government Board have issued an order, dated the 22nd March, 1894, expediting and simplifying the procedure under the section in the year 1894, of which the operative parts are as follows:â â

"Article I.â This Order shall, unless we shall otherwise direct, regulate the procedure under sect. 57 of the Local Government Act, 1888, in all cases in the year one thousand eight hundred and ninety-four, for the purpose of bringing the Local Government Act, 1894, into immediate operation, except cases in which notice of a local inquiry has been given before the date of this Order; and the said Order dated the fourteenth day of September, one thousand eight hundred and eighty-nine, shall not apply in any case to which this Order applies.

"Article II.â (1.) A local inquiry, at which all persons interested may attend and be heard, shall, prior to any Order being made by a county council under sect. 57 of the Local Government Act, 1888, be held in regard to the proposal, either by a committee of the county council, or by some person (1) As a matter of fact this dis certain other sections was lost sight crepancy is accounted for by the of. This circumstance, however, circumstance that an amendment cannot of course be regarded by a raising the population required to Court called upon to construe the render the establishment of a parish Act.

council for a rural parish obligatory (2) 38 39 Vict. c. 55, s. 9.

from 200 to 300, was inserted in (3) 51 52 Vict. c. 41, s. 57.

the Bill at the last moment, and (4) See the note to the section in that the necessity of making conse question in the Appendix, quential amendments in this and 56 57 Vict, appointed by the county council to hold such inquiry, as the c 73) s- 3 6 Â n-council may direct.

"(2.) The said inquiry shall, unless the county council otherwise determine, be held at some convenient place in the county district, or in one of the county districts, proposed to be dealt with, or in the county district within which is situate the parish, or one of the parishes, proposed to be dealt with, or at such place in the neighbourhood as may, in the opinion of the committee or person by whom the inquiry is to be held, be most convenient for the purpose.

"(3.) At least ten days before the day when the inquiry is to be held, public notice of the purport of the proposal, and of the day, time, and place fixed for the inquiry in regard to it, shall be given by the county council by advertisement in some local newspaper circulating in the locality to which the proposal relates.

"Article III.â At least ten days before the day when any such local inquiry is to be held, a printed notice of the purport of the proposal, and of the day, time, and place for the inquiry shall also be published in the manner herein-after prescribed, and shall be sent to the several government departments and local or other authorities herein-after specified; that is to say,â

"(1.) A copy of the said notice shall be posted as a bill or placard in such places in the county district or districts or parish or parishes interested in the proposal as are ordinarily made use of for posting public or parochial notices.

"(2.) In any case where the proposal relates to the alteration of or other dealing with any sanitary district, a copy of the notice shall be sent by the county council to the sanitary authority of such district.

"(3.) In any case where the proposal relates to the alteration of or other dealing with any parish a copy of the notice shall be sent by the county council to the overseers of the poor of such parish; to the guardians of the poor of the union in which such parish

is comprised; to the school board (if any) for such parish or for any part thereof; to the highway authority or authorities of the parish; to the burial board (if any) for such parish or for any part thereof; and to the urban sanitary authority (if any) in whose district such parish or any part thereof is comprised.

"(4.) A copy of the notice shall be sent by the county council to any local authority which, in the opinion of the county council, is specially interested in the proposal.

"(5.) A copy of every such notice shall be sent by the county council to the Local Government Board; and in any case where the proposal relates to the alteration of any area of local government a copy 56 57 Vict, of the notice shall be sent by the county council c- 73 s 36 n-to the Board of Agriculture, the Public Works Loan Commissioners, the Director General of the Ordnance Survey at Southampton, and to the Registrar General; and in any case where the proposal relates to the alteration or definition of the boundary of any parish a copy of the notice shall be sent to the Education Department. " Article IV. (1.) If the case is one in which any order made by a county council under sect. 57 of the Local Government Act, 1888, requires confirmation by the Local Government Board, public notice of the provisions of any such order made by a county council shall be given by the county council by advertisement in some local newspaper circulating in each district or "parish affected by the order; and such advertisement shall be published within ten days after the making of the order.

"(2.) If the case is one in which any order made by a county council under sect. 57 of the Local Government Act, 1888, does not require confirmation by the Local Government Board, public notice of the proposed order shall, after the inquiry required by Article II. hereof has been held, and not less than twenty-one days before the meeting of the county council at which the order is proposed to be made, be given by the clerk to the county council by advertisement in some local newspaper circulating in each district affected by the order.

"(3.) Any advertisement issued in pursuance of this article shall contain either a copy of the order, or proposed order, as the case may be, or a statement of the effect of the order, or proposed order, and shall also contain a statement of the time and place or places during and at which copies of the order, or proposed order, may be inspected by any owner or ratepayer in any area affected by the order, or proposed order, during a period of fourteen days from the date of the publication of such advertisement, and the order, or proposed order, shall be open for such inspection during such period.

"(4.) There shall be appended to any proposed order or statement of a proposed order advertised or deposited for inspection in pursuance of this article, a notice to the effect that any person interested in the proposed order who objects thereto may attend and be heard at a meeting of the county council to be held on a day and at a time which shall be mentioned in the notice if, not less than three days before the date of the meeting, he sends to the clerk of the council a statement in writing of the nature of his objection."

"Article V. (1.) A copy of any Order made or proposed to be made by a county council as aforesaid shall, at any time while copies of the order, or proposed order, are open to inspection as aforesaid, and in the case of an order which 56 57 Vict, requires to be confirmed by the Local Government Board, at c 73, s- 36 n- any time before



the expiration of six weeks from the publication of the advertisement in pursuance of Article IV. (1.) hereof, be supplied by the clerk to the county council to any owner or ratepayer in any area affected by the order, or proposed order, upon payment by such owner or ratepayer of a sum not exceeding threepence for each hundred words of manuscript if the copy of the order, or proposed order, be in writing, or upon payment of a sum not exceeding threepence for a printed copy of the order, or proposed order.

"(2.) A copy of a proposed order supplied in pursuance of this article shall contain a notice to the effect specified in Article IV. (4.) hereof.

"Article VI.â On or before the date of the publication in pursuance of Article IV. (1.) hereof of the advertisement of the provisions of any order made as aforesaid and requiring confirmation by the Local Government Board, three copies of the order shall be forwarded to the Local Government Board and to each of the other government departments to whom a copy of the notice of the inquiry relative to the proposed order was, by Article III. hereof, required to be sent; a copy of the order shall also be sent to each of the local or other authorities to whom a copy of such notice was so required to be sent, and a copy shall also be posted in like manner as the notice of the inquiry was, in pursuance of the same article, required to be posted.

"Article VII.â The advertisement in pursuance of Article IV. (1.) hereof of the provisions of any order made by a county council under section 57 of the Local Government Act, 1888, and requiring confirmation by the Local Government Board, shall be deemed to be the 'first notice' for the purposes of sub-section (3) of that Section as amended by section 40 of the Local Government Act, 1894.

"Article VIII.â (1.) If the case is one in which any order made under Section 57 of the Local Government Act, 1888, does not require confirmation by the Local Government Board, a copy of the proposed order shall, on or before the date of the publication in pursuance of Article IV. (2.) hereof of the advertisement of the provisions of the proposed order, be sent to each of the local or other authorities to whom a copy of the notice of the inquiry relative to the proposed order was, by Article III. hereof, required to be sent, and a copy shall also be posted in like manner as the notice of the inquiry was, in pursuance of the same article, required to be posted.

"(2.) Any such copy shall contain a notice to the effect specified in Article IV. v4) hereof.

"(3.) The final approval of the county council of any such order may be dispensed with, if the requirements of Article IV. hereof and of this article have been complied with.

"(4.) When any such order has been made by a county council three copies thereof shall forthwith be forwarded to the

Local Government Board and to each of the other government 56 57 Vict, departments to whom a copy of the notice of the inquiry was c- 73' s- 3 6 Â n-required by Article III. hereof to be sent, and a copy of the order shall also be at the same time sent to each of the local or other authorities to whom a copy of such notice was so required to be sent.

"Article IX.â The expression 'county council' in this Order shall include a committee to whom the county council have delegated their powers under the Local Government Act, 1894, and also a joint committee appointed by any county councils

of administrative counties for the purpose of dealing with any case or cases in which such councils are jointly interested, and, in any such last-mentioned case, references in this order to the county shall be deemed to refer to either of the counties interested, and references to the clerk to the county council to any person acting as clerk to the joint committee or appointed by such committee to discharge the duties of the clerk to a county council under this order."

Parish divided by the Act. â Where a parish is divided by the Act, either by sect. 1 (3), or by sub-sect. (2) of the present section, the several parts of the parish are to become separate parishes, as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, 1 and the amending Acts. The provisions of these Acts as to the constitution of separate parishes are referred to at some length, post, pp. 180-183.

By sub-sect. (3) of the present section the county council are enabled to make provisions as to charities and the custody of parish documents in the new parishes so constituted. By sub-sect. (9) the new parishes will, until it is otherwise provided, be included in the same union in which the original parish was included. By sect. 55 (2), each of the new parishes is to bear such name as the county council direct. By sect. 79 (2), one guardian or rural district councillor, as the case may be, is, subject to any order of the county council, to be elected for each of the new parishes. By sect. 79 (11) the overseers of the original parish are, until the first appointment of overseers next after the appointed day, to continue in office as if they were overseers for each of the new parishes: see also sect. 78 (1). By sect. 85 (4) every valuation list made for a parish divided by the Act is to continue in force until a new valuation list is made. By sect. 81 (5) any officer of the original parish will hold his office for each of the new parishes, and his salary will be borne by the new parishes in proportion to their rateable value on the 1st April 1894. And by sect. 69 county councils are given the widest powers for making all adjustments rendered necessary by the sub-division of the original parish.

Rural sanitary district divided by the Act. â Where a rural (1) 39 40 Vict. c. 61.

56 57 Vict. sanitary district is divided into two or more county districts by c. 73, s- 3 6 n- sect. 24 (5), officers of the rural sanitary authority will, under sect. 81 (5), hold their offices as such officers for each of the county districts, and their salaries will be borne by the several districts in proportion to their rateable value on the 1st April, 1894. Under sect. 69 the county councils interested have the most ample powers to effect all adjustments rendered necessary by the sub-division of the district.

Alteration of parish boundaries. â The 'object of sub-sect. (8) of the present section is not by any means clear. Sect. 5 7 of the Local Government Act, 1888, x already provides for the making of the various alterations of area referred to in the sub-section by order of the county council confirmed by the Local Government Board. And, unless the sub-section is intended to authorise the county council to make an order for the alteration of parish boundaries under that section though no previous proposal for the alteration may have been made, the sub-section would appear to be superfluous; but the suggested construction of the sub-section is certainly unsatisfactory in view of the express provisions in sub-sect. (1), that, for certain specified purposes, a county

council may act under the section of the Local Government Act, 1888, in question, though no such proposal as is mentioned in that section has been made.

Order of county council. â By sub-sect (10), an order of a county council under the present part of the Act, is, subject to the provisions of the Act, to be deemed to be an order under sect. 57 of the Local Government Act, 1888. 2 This provision will apply, it is to be observed, not only to an order under the present section dealing with areas and boundaries, or with charities or the custody of documents in a parish divided by the Act, but also to an order as to the rights of part of a parish under sect. 37, and to any order under sects. 38 and 39, contributing a group of parishes, establishing a separate parish council for a small parish, or dissolving a parish council or a group of parishes.

Perhaps the most important effect of the provision in question is that it renders sect. 59 of the last-mentioned Act 3 applicable to any such order, and therefore enables the county council, in such an order, to make almost any conceivable arrangement incidental to or consequential on the main purpose of the order, and also if occasion arises to amend such an order from time to time.

Orders under sect. 57 of the Local Government Act, 1888, in most instances require confirmation by the Local Government Board; but under sect. 40, post, orders of a county council under sub-sect. (3) of the present section and under sects. 37, 38, and 39, will not require such confirmation.

By sect. 42, post, a limitation is put upon the time within (1) 51 52 Vict. c. 41, s. 57. (2) lb. (3) lb. s. 59.

which the validity of an order under sect. 57 of the Local 56 57 Vict. Government Act, 1888, confirmed by the Local Government c- 73. s- 3 6 n-Board, may be called in question.

By sect. 71a copy of every order made by a county council in pursuance of the Act is to be sent to the Local Government Board, and, if it alters any local area or name, also to the Board of Agriculture.

Boundary co7tmission. â The Boundary Commissioners who were appointed by the Act 1 referred to in sub-sect. (12) were thereby required to make certain inquiries in relation to local boundaries, and to present a report to the Local Government Board. Their report, which was in due course presented and printed, is accompanied by numerous detailed schemes for effecting adjustments of area.

Transfer of powers of county council to Local Government Board. â It will be observed that it is only the powers of the county council for the purpose of bringing the Act into operation that are, at the expiration of a certain time, transferred to the Local Government Board by sub-sect. (13). The general powers of the county council as to areas and boundaries under the Local Government Act, 1888, 2 are unaffected by that subsection.

The remainder of the note to the present section is devoted to a discussion of the boundaries of parishes, unions, and sanitary districts generally.

The Parish. â The meaning of the expression " parish" in the present Act is determined by the Interpretation Act, 1889, 3 which enacts that "in every Act passed after" 1866, " whether before or after the commencement of this Act, the expression ' parish ' shall, unless the contrary intention appears, mean, as respects England and



Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed." 4

The above definition is probably, though artificially worded, as accurate a definition as could be framed of the area, sometimes for the sake of distinction called a "poor law parish," which forms the fundamental subdivision of the country for the purposes of the administration of the poor law, and is in accordance with the most usual, though by no means the only, use of the expression "parish" at the present time.

Originally the expression parish was of ecclesiastical significance only, meaning according to Blackstone 5 "that circuit of ground which is committed to the charge of one parson, or vicar or other minister having cure of souls therein."

(1) 50 51 Vict. c. 61. the Poor Law Amendment Act, (2) 51 52 Vict. c. 41. 1866 (29 30 Vict. c. 113), s. 18, (3) 52 53 Vict. c. 63, s. 5. now repealed.

(4) This definition is a re-enact (5) Bla. Com. Vol. p. in. ment somewhat changed in form of 56 57 Vict. For civil purposes, the fundamental subdivision of the country c. 73 s- 36 "was in ancient times the "township." 1 When, however, parishes were first formed, the existing subdivision of the country into townships appears naturally enough to have been made use of, either a single township or a group of townships being formed for ecclesiastical purposes into a parish. 2 From the intimate connection thus existing between the township and the ecclesiastical parish it naturally came about that, even from early times, the parish was looked upon as a civil as well as an ecclesiastical subdivision of the country, and the legislature has accordingly usually treated the parish as the unit area for purposes of local government in normal cases, extending the meaning of the expression to cover other areas which though not strictly parishes, had, or were given for the purposes in question, a similar organisation.

The network of townships and parishes into which the country was anciently divided was not, it should be mentioned, complete; there were many places not included in any ecclesiastical parish, and there were places also not included in any township. Places not included in any parish were called "extra-parochial," an expression, which, like parish, though originally used in an ecclesiastical sense only, has also been applied to places not included in any poor law parish.

So much being premised, the legislation affecting the poor law parish and its boundaries may be traced.

The Poor Relief Act, 1601, 3 which forms the basis of the poor law, provided for the constitution in each parish of a body of overseers, who were to levy the poor rate and relieve the poor of the parish. This enactment was held to extend as well to places which, at the date of the Act, were reputed to be parishes as to places that were strictly ecclesiastical parishes. 4

The Poor Relief Act, 1662, 5 contains provisions couched in somewhat obscure language, under which, as they were interpreted by the Courts, townships and villages, which from various causes were not in a position to reap the benefit of the Poor Relief Act, 1601, might have separate overseers appointed for them and become independent poor law parishes. The power of constituting fresh poor law parishes under this Act was abolished by the Poor Law Amendment Act, 1844, which enacted that it should not in future be lawful to appoint separate overseers for any township or village or

other place for (1) See Stubbs' Constitutional 224, et seq. History (ed. 1874), Vol. i. pp. 82, (3) 43 Eliz. c. 2.

et seq. The terms "tithing" and (4) See *SAarpney v. Mablethorpe*  
"vill" appear from a legal point (*ckurcnvardens, c.*) (1854), 3 E.

of view to be equivalent in meaning B. 906; 24 L. J. M. C. 35; to township: see  
Bla. Com. Vol. i. S. C. nom. Reg v. *Sharptey*, 18 p. 114. Jur. 835.

(2) Stubbs' Constitutional His (5) 14 Car. II. c. 12, S3. 21, 22. tory (ed. 1874),  
Vol. i. pp. S5, which before the passing of that Act, separate overseers had not 56 57  
Vict, been lawfully appointed. 1 c- 73 s- 3 6 n-

An Act of 1819 2 legalised the existence as separate poor law parishes of certain  
areas that had for long been in practice separate parishes for poor law purposes, though  
not legally-entitled to that position.

By the Extra-Parochial Places Act, 1857, 3 certain extra-parochial places were  
constituted parishes for the purposes, among others, of the administration of the poor  
law, and the justices of the peace were empowered to appoint overseers for other  
extra-parochial places wherein no poor rate was at that time levied. 4 The same Act  
empowered quarter sessions in certain cases to annex extra-parochial places for the  
purposes above mentioned to existing parishes. 5

The Poor Law Amendment Act, 1867, enabled the Poor Law Board in certain  
cases to adjust parish boundaries, and subdivide parishes by a provisional order to be  
confirmed by Parliament. 6 The powers of the Poor Law Board under this enactment  
are now vested in the Local Government Board, but are practically superseded by the  
enactments mentioned below.

By the Poor Law Amendment Act, 1868,; it is enacted "that from the 2<sup>th</sup> day of  
December next 8 everyplace which was or is reputed to be extra-parochial, whether  
entered by name in the report upon the census for the year 1851 or not, for which an  
overseer has not been then appointed, or for which no overseer shall be then acting,  
or which has not been then annexed to and incorporated with an adjoining parish,  
shall for all civil parochial purposes be annexed to and incorporated with the next  
adjoining parish with which it has the longest common boundary, and in case there  
shall be two or more parishes with which it shall have boundaries of equal extent, then  
with that parish which now contains the lowest amount of rateable value; and every  
accretion from the sea, whether natural or artificial, and the part of the sea-shore to  
the low-water mark, and the bank of every river to the middle of the stream, which  
on the 25<sup>th</sup> day of December next shall not be included within the boundaries of or  
annexed to and incorporated with any parish, shall for the same purposes be annexed  
to and incorporated with the parish to which such accretion, part, or bank adjoins in  
proportion to the extent of the common boundary."

Before this enactment came into operation, the presumption (1) 7 8 Vict. c. 101,  
s. 22. (3) 20 Vict. c. 19. The possibility of the creation of (4) lb. s. 1.

new parishes under the Act of 1662 (5) lb. s. 4. having been thus abolished for (6)  
30 31 Vict. c. 106, s. 3. nearly fifty years, the numerous (7) 31 32 Vict. c. 122, s.  
27. decisions on its interpretation have (8) The words in italics are re-ceased to be of  
importance. pealed by the Statute Law Revision (2) 59 Geo. III. c. 95. Act, 1893.

56 57 Vict. was that land on the sea-shore, or on the bank of a tidal river, c 73s- 3 6 n- below high water-mark was extra-parochial. 1

Extensive powers for the division and combination of parishes, and the adjustment of their boundaries, are vested in the Local Government Board under the Divided Parishes and Poor Law Amendment Act, 1876, 2 the Poor Law Act, 1879, 3 and the Divided Parishes and Poor Law Amendment Act, 1882. 4 The last of these Acts, moreover, provided that where any part of a parish was isolated or detached from the other part or parts of the parish, and was wholly surrounded by another parish, such parts should, as from the 25th March, 1883, be amalgamated with the last mentioned parish, as if the amalgamation had been effected by order of the Local Government Board under the Act of 1876; and that, for the purposes of this enactment, two or more isolated or detached parts of parishes adjoining each other, and together wholly surrounded by another parish, should be deemed one isolated or detached part. 5 The Act, however, enabled the Local Government Board, on the application of a certain proportion of the ratepayers of any such isolated or detached part with a population exceeding three hundred, to constitute the same a separate parish. 6

The powers of the Local Government Board under these Acts, which are to be read together, 7 have been comparatively seldom exercised since the passing of the Local Government Act, 1888, 8 though that Act contains an express saving with regard to them. 9 But, in view of the fact that by sect. 1 (3) and sub-sect. (2) of the present section, the several parts of a parish divided by the present Act are, as from the appointed day to " be separate parishes, in like manner as if they had been constituted separate parishes " under the Acts in question, it seems proper to refer to their provisions in some detail. In considering the position of a parish divided by the present Act, however, the express provisions of the Act as to the case which are referred to, ante, p. 175, must not be lost sight of.

The Acts enable the Local Government Board, after certain preliminary steps, to make an order, to take effect at the expiration of a certain period, as to any " divided parish," either for constituting separate parishes out of the divided parish or for amalgamating some of the parts thereof with the parish or parishes in which the same may be locally included, or to which they may be annexed. 10 The expression " divided (1) Reg. v. Musson (1858), 8 E. (3) 42 43 Vict. c. 54, ss. 4-7.

6 B. 900; 27 L. J. M. C. 100; (4) 45 46 Vict. c. 58, ss. 1-7. 4 Jur. (n. s.) hi; Bridgwater (5) lb. s. 2.

(trustees) v. Booth-cum- Linacre (6) lb. s. 4.

(highway surveyors) (1866), L. R. (7) lb. s. 1 2 Q. B. 4; 36 L. J. Q. B. 41; (S) 51 52 Vict. c. 41.

15 L. T. 351; 15 W. R. 169; (9) lb. s. 57 (7) set out in the 7 B. S. 348. Appendix.

2) 39 40 Vict, c. 61, ss. 1-9. (10) 39 40 Vict. c. 61, s. 1, parish " was, in the Act of 1876, used as meaning any parish so 56 57 Vict.

divided as to have its parts isolated in some other parish or c- 73. s- 3 6 n.

parishes, or otherwise detached. 1 The Act of 1879, 2 however, provides that " where part of a parish is on one side while the residue of the parish is on the other side of the boundary of a municipal borough or county, or of a river, estuary, or branch of the sea, or where part of a parish is so situate as to be nearly detached from the residue



of the parish, or is otherwise so situate as to render the administration of the relief of the poor in or the local government of such part in conjunction with the residue of the parish inconvenient, the said parish shall be deemed to be a divided parish within the meaning of section one of the Divided Parishes and Poor Law Amendment Act, 1876, and the provisions of that Act shall apply accordingly in like manner as if the said part were isolated as mentioned in that section."

If an order of the Local Government Board under these enactments is objected to by a certain proportion of the ratepayers in any parish affected, it is provisional only, and requires confirmation by Parliament. 3

With regard to the effect of the order, the Act of 1876 contains the following provisions:â

Sect. 3. " From and after the twenty-fifth day of March next ensuing the day when such order, if not objected to, shall take effect, and in the case of a provisional order next ensuing the date of the Act of Parliament confirming the same, the several parts of every parish to which such order shall apply shall be and continue to be constituted in the manner directed by the said order, and the officers of the several parishes affected thereby shall be empowered and shall be required to act as if such parishes had been constituted in the manner directed prior to the issue of such order."

Sect. 4. " Nothing herein contained shall apply to the ecclesiastical divisions of parishes, nor to the constitution of school districts, without the sanction of the Education Department, 4 or shall alter the boundaries of any municipal borough, and for the purposes of the election of members of Parliament and of burgesses in municipal boroughs, of the jury lists, of the action of the justices, and of the police and constables, the parishes shall continue to be deemed unaltered until new lists are made and new constables are appointed."

Sect. 5. "Where a parish affected by the order shall be included in a highway district, its condition therein and the appointment of the waywarden thereof shall be changed according to the terms of the order, whether its area or contents be diminished or increased thereby."

Sect. 6. " Every parish constituted under this Act by the (1) 39 40 Vict. c. 61, s. 1. (4) See 42 43 Vict. c. 54, s. 7, (2) 42 43 Vict. c. 54, s. 4. referred to post, p. 183. (3) 39 44 Vict. c. 61, s. 2.

56 57 Vict, order of the Local Government Board shall, notwithstanding c 73i s- 3 6 n- the prohibition as to the appointment of overseers contained in the twenty-second section of the Poor Law Amendment Act, 1844, 1 be a parish for which an overseer shall be appointed, and for all other lay and civil purposes to which a parish may be liable or entitled.

"The meeting of inhabitants of the same qualified as in the case of any ordinary parish shall be deemed the vestry meeting thereof, and the rector, vicar, or perpetual curate having cure of souls in the greater part thereof shall, when present, be the chairman thereof, unless the Local Government Board shall determine in their order which of such incumbents shall be such chairman, and all the documents of the respective parishes shall be deposited and kept in such place as the Local Government Board by their order shall appoint." 2

Sect. 7. " If any person shall be deprived of any office or employment, or if his profits in respect thereof shall be diminished under or by reason of any provision of this Act, the Local Government Board may, if they see fit, award by their order a compensation to him, according to their judgment, to be paid out of such fund and in such manner as shall appear to them to be equitable." 3

Sect. 8. " . and the justices, who shall make a county rate upon any such parishes before a new basis for the same shall be established, shall make due provision therein for the alterations aforesaid. 4

"Provided that no person shall be liable to any rate made in the parish to which the part of the parish wherein his land or premises shall be situated may be added before the said twenty-fifth day of March."

Sect. 9. " Nothing herein contained shall prejudice, vary, or affect any right, interest, or jurisdiction in or over any charitable endowment which now is, or hereafter shall be, applicable for the benefit of a divided parish, as defined by section one of this Act, or the inhabitants thereof." 5

The Acts of 1879 and 1882, contain further provisions as to the maintenance of highways in areas affected by the Acts or (1) 7 8 Vict. c. 101, s. 22, section, which provides for the referred to ante, pp. 179, 180. adjustment of property, debts, and (2) This section from the words liabilities, and for the recovery "The meeting of inhabitants" to of arrears of rates, is repealed by the end of the section is repealed sect. 89, post, except as to cases by sect. 89 of the present Act, so where a parish is dealt with by far as it relates to rural parishes. order of the Local Government With regard to the custody of docu Board. As to adjustments where a ments in a parish divided by the parish is subdivided by the Local present Act, see sub-sect. (3) of the Government Act, 1894, see sect. 69, present section. tost.

(3) As to the position of an (5) For provisions relating to the existing officer of a parish sub charities of a parish subdivided by divided by the Local Government the Local Government Act, 1894, Act, 1894, see sect. 81, post. see sub-sect. (3) of the present (4) The omitted part of the section of that Act.

orders made under them. 1 The latter Act also enacts that 56 57 Vict. " notwithstanding anything contained in the "lact of 1876, " any c- 73 s- 3 6 Â n-alteration of an area made by or pursuant to this Act shall extend to alter the constitution of the school districts, unless the Educational Department otherwise direct"; 2 and that " for the purposes of the " Act of 1876, "and the Acts amending the same, a riding or other division of a county having a separate court of quarter sessions, or for which a separate county treasurer may be appointed, shall be deemed to be a separate county." 3

The important provisions of the Local Government Act, 1888, 4 with regard to parish boundaries have been referred to above, and will be found at length in the Appendix.

Certain other statutory provisions as to parish boundaries may be briefly mentioned:â Provisions for the adjustment of parish boundaries are contained in the Inclosure (Consolidation) Act, T801, 5 and in other early Acts relating to inclosure. 6 Powers for the purpose were conferred on the tithe commissioners and the inclosure commissioners under the Tithe Acts, 1836 to 1891, 7 and the Inclosure Acts, 1845 to 1882 8 respectively. These powers are now vested in the Board of Agriculture. 9

Where the boundaries of a parish have not been determined by statute, or by some order made under statute, they are traditional, and must be determined accordingly in cases of dispute by evidence of reputation. 10 Where a non-tidal river or a highway forms the boundary between two parishes, the presumption, in the absence of positive evidence, is that the middle line of the river or highway forms the exact boundary. 11

In many parishes it is the custom for the parishioners to perambulate the parish boundaries from time to time in rogation week; 12 and by the Poor Law Amendment Act, 1844, 13 it is provided that all expenses properly incurred by the parish officers " on the perambulation of the parish, and in setting up, (1) 42 43 Vict. c. 54, s. 7; (8) See 8 9 Vict. c. 118, s. 39; 45 46 Vict. c. 58, ss. 3, 6. 12 13 Vict. c. 83, ss. 1, 9; 15 (2) 45 46 Vict. c. 58, s. 5. 16 Vict. c. 79, s. 28.

(3) lb. s. 7. (9) See ante, p. 51.

(4) 51 52 Vict. c. 41, s. 57, (10) Reg. v. Mytton (1860), 2 E. and see sect. 54. E. 557; S. C. nom. Mytton v.

(5) 41 Geo. III. c. 109, s. 3. Thornbury (overseers); 29 L. J.

(6) 6 7 Will. IV. c. 115, M. C. 109; 6 Jur. (n. s.) 311; 2 s. 28; 3 4 Vict. c. 31, ss. 2, 3. L. T. 12; 8 W. R. 275.

(7) See 1 Vict. c. 69, ss. 2, 3; (11) Mccannonv. Sinclair (1859), 2 3 Vict. c. 62, ss. 34-36; 3 4 2 E. E. 53; 28 L. J. M. C. 247; Vict. c. 15, s. 28; 9 10 Vict. 5 Jur. (N. s.) 1302; 7 W. R. 567; c. 73, s. 21; as to the definition of Reg. v. Strand District (board of the expression "parish," for the works) (1863), 4 B. S. 526; 33 purposes of these Acts, see 6 7 L. J. M. C. 33; 9 L. T. 374; 12 Will. IV. c. 71, s. 12; and, as to W. R. 46.

the construction of the enactments, (12) Seegooddayv. Michell( Q ), see Re Ystradgunlais Commutation Cro. Eliz. 441; Owen, 71; Co.

(1844), 8 Q. B. 32; Re Dent Com Ent. 650, 651Â; Taylor v. Devey imitation (1845), 8 Q. B. 43; Reg. (1837), 7 A. E. 409; 2 N. P.

v. Madeley (inhabitants) (1850), 15 469; 7 L. J. M. C. 11. Q. B. 43; 19. J. L M. C. 187. (13) 7 8 Vict. c. 101, s. 60.

56 57 Vict. and keeping in proper repair the boundary stones of the parish c 73 s. 36, n. provided that such perambulations do not occur more than once in three years," shall be defrayed out of the poor rates.

The Union. â Under the definition incorporated with the present Act, 1 the expression " poor law union " includes unions formed in the usual way under the Poor Law Amendment Act, 1834, 2 and also unions or incorporations under local Acts, and single parishes under separate boards of guardians, whether under local Acts or otherwise. Hitherto the Local Government Board and their predecessors alone have had power to constitute, alter or dissolve unions. 3

Sanitary Districts. â Under the Public Health Act, 1875, 4 England, With the exception of the Metropolis, is divided into urban and rural sanitary districts. 5 The Act provided that, subject to the provisions referred to below, the following areas should form urban sanitary districts:â (1) Municipal boroughs constituted either before or after the passing of the Act, (2) Improvement Act districts constituted before the passing of the Act, and (3) Local government districts constituted either before or after the passing of the Act. 6 The expression " Improvement Act district " was defined as meaning " any area for the time being subject to the jurisdiction of any improvement





if any, which are included in any urban sanitary district, forms a rural sanitary district. The boundaries of rural sanitary districts have accordingly hitherto been entirely dependent upon those of unions and urban sanitary districts. 12 (1) See the Local Government 40 41 Vict. c. 69.

Board Report for 1888-89; 52 (6) 51 52 Vict. c. 41, s. 56.

53 Vict. caps. xv., xxii., xlv., cxii., (7) lb. ss. 52, 54, set out in the cxvi., clxxii.; and, as to Newport, Appendix.

Isle of Wight, the only borough, (8) 11 12 Vict. c. 63, ss. 8-10, save Folkestone, excepted by name 141, 142; 21 22 Vict. c. 98, in sect. 6 of the Public Health Act, ss. 12-23; 26 Vict. c. 17; 34 35 1875, which is not dealt with by Vict. c. 70; 35 36 Vict. c. 79, the Acts above referred to, see 39 ss. 22-25. All these enactments are 40 Vict. c. lxi. now repealed.

(2) 5 6 Will. IV. c. 76, (9) 38 39 Vict. c. 55, ss. 270-ss. 7, 8, now repealed. 278.

(3) 6 7 Will. IV. c. 103, now (10) 51 Sc 52 Vict. c. 41. repealed. (11) 3 8 39 Vict. c. 55, s. 9.

(4) 45 46 Vict. c. 50, s. 228. (12) The Local Government Act, (5) lb. ss. 210-218. As to the 1888 (51 52 Vict. c. 41, s. 57), constitution of new boroughs in the purports to enable the boundaries of interim between the Act of 1835 a rural sanitary district to be altered and the Act of 1882, see the follow independently of the boundaries ing repealed enactments:â 5 6 of the union; but it has hitherto Will. IV. c. 76, s. 141; 7 Will. IV. been impracticable to effect such 1 Vict. c. 78, s. 49; 13 14 an alteration.

Vict. c. 42; 16 17 Vict. c. 79;

The Local Government Act, 1894.

Part 56 57 Vict. c 73, s. 37-Provision as to parishes having parts with defined boundaries.

Orders for grouping parishes and dissolving; j rroups.

Sect. 37.â Where it is proved to the satisfaction of the county council that any part of a parish has a denned boundary, and has any property or rights distinct from the rest of the parish, the county council may order that the consent of a parish meeting held for that part of the parish shall be required for any such act or class of acts of the parish council affecting the said property or rights as is specified in the order.

Note. Defined bowidary. â By sect. 12 of the Local Government Act, 1858, 1 it was provided that that Act might be adopted, in certain cases, for "a place having a known or defined boundary." It was held that a district formed for ecclesiastical purposes was such a place; and that, to entitle a district to adopt the Act as being such a place, it was not necessary that it should be a legal district having a legal boundary of the whole inclosed area, but that it was sufficient if the district had an actual, known, and defined boundary, or one that was physical, visible, and notorious. 3 But the decision in one case 4 suggests that a parliamentary borough was regarded as not being a place having a known or defined boundary within the meaning of the enactment in question.

Order of county council. â With regard to an order of a county council under the present section, see the note to the preceding section, ante, p. 176.

Rights of part of parish. â By sect. 56 (2) provisions are made under which a parish council, having powers and duties relating to part of their parish only, may be required to appoint a committee for the exercise of such powers and duties consisting

partly of members of the council and partly of other persons representing the part of the parish in question.

Sect. 38.â (1.) Where parishes are grouped, the grouping order shall make the necessary provisions for the name of the group, for the parish meetings in each of the grouped parishes, and for the election in manner provided by this Act of separate representatives of each parish on the parish council, and may provide for the consent of the parish meeting of a parish to any particular act of the parish council, and for any other adaptations of this Act to the group of parishes, or to the parish meetings in the group.

(2.) Where parishes are grouped the whole area under (1) 21 22 Vict. c. 98, s. 12, now repealed.

(2) Reg. v. Northowram 6Â Clayton rate-payers), (1865) L. R. 1 Q. B. no; 7 B. S. no; 35 L. J. Q. B. 90.

(3) Reg. v. Local Government

Board (1873), L. R. 8 Q. B. 227; 21 W. R. 445.5". C. 7iom. Reg. v. Grasmere local board), 42 L. J. Q. B. 131.

(4) Reg. v. Hardy (1S6S), L. R. 4 Q. B. 117; 38 L. J. Q. B. 9; 9 B. S. 926.

each parish council shall, unless the county council for 56 57 Vict, special reasons otherwise direct, be within the same c- 7 3, s 38, administrative county and county district.

(3.) Where parishes are grouped, the grouping order shall provide for the application of the provisions of this Act with respect to the appointment of trustees and beneficiaries of a charity, and the custody of documents, so as to preserve the separate rights of each parish.

(4.) The parish meeting of any parish may apply to the county council for a grouping order respecting that parish, and, if the parish has a less population than two hundred, for a parish council, and any such application shall be forthwith taken into consideration by the county council.

(5.) The county council may, on the application of the council for any group of parishes or of the parish meeting for any parish included in a group of parishes, make an order dissolving the group, and shall by the order make such provision as appears necessary for the election of parish councils of the parishes in the group and for the adjustment of property, rights, and liabilities as between separate parishes and the group.

Note. Grouping orders. â The power to group parishes under a common parish council is conferred on the county council by sect. 1 (1), which provides, however, that no parish shall be grouped without the consent of the parish meeting. With regard to the relative powers of the parish council of a group and of the parish meetings of the several parishes comprised in the group, see sect. 19, and the note to that section.

As to orders of the county council under the section generally, see the note to sect. 36, ante, p. 176.

Establishment of parish council for s? null parish. â It will be observed that sub-sect. (4), as regards an application for the establishment of a parish council, is inconsistent with sect. 1, which renders an order of a county council necessary to the establishment of a parish council in a parish with a population under three hundred,



and requires the county council to make such an order in the case of a parish with a population between one hundred and three hundred, if the parish meeting so resolve. 1 No practical result seems likely to ensue from this inconsistency as, in view of the provisions of sect. 1, the provisions of sub-sect. (4) of the present section as to an application for the establishment of a parish council appear to be in any case superfluous.

Sect. 39. â (1.) Where the population of a parish not Provisions having a separate parish council increases so as to justify for increase the election of such council, the parish meeting may n S? 86 (1) As to the origin of this discrepancy, see ante, p. 171, note (1). uon.

56 57 Vict, petition the county council, and the county council, if c ' 73 ' s ' 39 " they think proper, may order the election of a parish council in that parish, and shall by the order make such provision as appears necessary for separating the parish i'rom any group of parishes in which it is included, and for the alteration of the parish council of the group, and for the adjustment of property, rights, and liabilities as between the group and the parish with a separate parish council.

(2.) Where the population of a parish, according to the last published census for the time being, is less than two hundred, the parish meeting may petition the county council, and the county council, if they think proper, may order the dissolution of the parish council, and from and after the date of the order this Act shall apply to that parish as to a parish not having a parish council. The order shall make such provision as appears necessary for carrying it into effect, and for the disposal and adjustment of the property, rights, and liabilities of the parish council. Where a petition for such an order is rejected, another petition for the same purpose may not be presented within two years from the presentation of the previous petition.

Note. Order of county council. â With regard to an order of a county council under this section, see the note to sect. 36, ante, p. 176.

Certain Sect. 40. â A grouping order, and an order establishing orders of or dissolving a parish council, or dissolving a group of council not parishes, and an order relating to the custody of parish to require documents or requiring the approval of the Charity confirma- Commissioners, and an order requiring the consent of tion. the parish meeting for any part of the parish to any act or class of acts of the parish council, shall not require submission to or confirmation by the Local Government

Board.

Reduction of Sect. 41.â The time for petitioning against an order time for under section fifty-seven of the Local Government Act, appealing 1888, shall be six weeks instead of three months after county e n Â ti ce referred to in sub-section three of that section.

council Sect. 42. â When an order under section fifty-seven orders. of the Local Government Act, 1888, has been confirmed

Validity of, j f ne Local Government Board, such order shall at the ex- cÂ uncl piration of six months from that confirmation be presumed orders. to have been duly made, and to be within the powers of that section, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

56 57 Vict. c. 73 s. 43.

## PAET IV.

### Supplemental.

#### Parish Meetings and Elections.

Sect. 43.â For the purposes of this Act a woman shall Removal of not be disqualified by marriage for being on any local disqualifica-o-overnment register of electors, or for being- an elector tlou?, of any local authority, provided that a husband and women wife shall not both be qualified in respect of the same property.

Note. Married women. â Married women are at present disqualified to be enrolled as local government electors; and it seems also that a woman, registered as a local government elector while single, becomes disqualified to vote at an election of borough or county councillors, if she has married in the meantime. 1

The present section, it will be observed, removes the disqualification only " for the purposes of this Act." The section will not therefore, it seems, enable a married woman to vote at an election of borough or county councillors.

Sect. 44.â (1.) The local government register of Register of electors and the parliamentary register of electors, so parochial far as they relate to a parish shall, together, form the electors ' register of the parochial electors of the parish; and any person whose name is not in that register shall not be entitled to attend a meeting or vote as a parochial elector, and any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by this or any other Act of Parliament.

(2.) Where the parish is in a parliamentary borough, such portion of the parliamentary register of electors for the county as contains the names of persons registered in respect of the ownership of any property in the parish shall be deemed to form part of the parliamentary register (1) Reg. v. Harrauld (1872), L. R. 26 L. T. 616; 20 W. R. 328. 7Q. B. 361; 41 L. J. Q. B. 173; 56 57 Vict, of electors for the parish within the meaning of this c 73. s. 44. section.

(3.) The lists and register of electors in any parish shall be framed in parts for wards of urban districts and parishes in such manner that they may be conveniently used as lists for polling at elections for any such wards.

(4.) Nothing in any Act shall prevent a person, if duly qualified, from being registered in more than one register of parochial electors.

(5.) Where in that portion of the parliamentary register of electors which relates to a parish a person is entered to vote in a polling district other than the district comprising the parish, such person shall be entitled to vote as a parochial elector for that parish, and in addition to an asterisk there shall be placed against his name a number consecutive with the other numbers in the list.

(6.) Where the revising barrister in any list of voters for a parish wouldâ (a) in pursuance of section seven of the County 51 Vict. c. 10. Electors Act, 1888, place an asterisk or other mark against the name of any person; or (b) in pursuance of section four of the Registration

Act, 1885, erase the name of any person otherwise than by reason of that name appearing more than once in the lists for the same parish; or (c) in pursuance of section twenty-eight of the Par-41 42 Vict. liamentary and Municipal Registration Act, 1878, c- 26 as amended by section five of the Registration

Act, 1885, place against the name of a person a note to the effect that such person is not entitled to vote in respect of the qualification contained in the list, the revising barrister shall, instead of placing that mark or note, or erasing the name, place against the name, if the person is entitled to vote in respect of that entry as a county elector or burgess, a mark signifying that his name should be printed in division three of the list, or if he is entitled to vote only as a parochial elector, a mark signifying that he is entitled to be registered as a parochial elector, and the name so marked shall not be printed in the parliamentary register of electors, but shall be printed, as the case requires, either in division three of the local government register of electors, or in a separate list of parochial electors.

(7.) Where the name of a person is entered both in the ownership list and in the occupation list of voters in the same parish, and the revising barrister places against 48 49 Vict c. 15.

that name a mark or note signifying that the name should 56 57 Vict, be printed in division three of the lists, an asterisk or c 73 ' b ' 44 ' other mark shall be there printed against the name, and such person shall not be entitled to vote as a parochial elector in respect of that entry.

(8.) Such separate list shall form part of the register of parochial electors of the parish, and shall be printed at the end of the other lists of electors for the parish, and the names shall be numbered consecutively with the other names on those lists, and the law relating to the register of electors shall, with the necessary modifications, apply accordingly, and the lists shall, for the purposes of this Act, be deemed to be part of such register.

(9.) Any person may claim for the purpose of having his name entered in the parochial electors' list, and the law relating to claims to be entered in lists of voters shall apply.

(10.) The clerk of the county council or town clerk, as the case may be, shall, in printing the lists returned to him by the revising barrister, do everything that is necessary for carrying into effect the provisions of this section with respect to the persons whose names are marked by the revising barrister in pursuance of this section.

Note. Conclusiveness of register. â In the case of a Parliamentary election, it is provided by sect. 7 of the Ballot Act, 1872, 1 that every person on the register shall be entitled to vote; " provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament." It has been held that this enactment renders the register conclusive for the purposes of a Parliamentary election, except in the case of" persons who, from some inherent, or for the time irremovable quality in themselves have not, either by prohibition of statutes or at common law, the status of Parliamentary electors." 2 At a Parliamentary election, accordingly, the votes, not only of persons prohibited from voting by statute, but also of aliens, infants, women, c, may be struck off, if the election is petitioned against, notwithstanding that such persons may by error be on the register. 3

It may be that sub-sect. (1) of the present section, however, will render the register conclusive for the purpose of elections under the present Act even in the case of persons, such as (1) 35 36 Vict. c. 33, s. 7. W. R. 911.



(2) *Stowe v. Jolliffe Petersfield* (3) See further the note in the petition) (No. 2) (1874), L. R. 9 Appendix to sect. 100 of the Muni-C. P. 734, at p. 750; S. C. 43 cipl Corporations Act, 1882 (45 L. J. C. P. 265; 30 L. T. 795; 22 46 Vict. c. 50).

The Local Government Act, 1894.

Part 56 57 Vict. c 73, s. 44, n,

Supplemental provisions as to parish meetings.

Disqualifications for parish or district council.

aliens and infants, who have not the status of electors, and will allow of its being questioned on petition only as regards persons prohibited from voting by statute.

Among persons prohibited by statute from voting at an election under the present Act are persons guilty of certain offences against election law at Parliamentary and other elections, including elections under the present Act, 1 persons employed for payment in connection with the election, 2 and persons adjudged incapable of voting upon conviction under the Public Bodies Corrupt Practices Act, 1889. 3

Sect. 45. â (1.) Subject to the provisions of this Act, parish meetings shall be held on such days and at such times and places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting.

(2.) If the chairman of the parish council is present at a parish meeting and is not a candidate for election at the meeting, he shall, save as otherwise provided by this Act, be the chairman of the meeting.

(3.) The chairman of the parish council, or any two parish councillors, or the chairman of the parish meeting, or any six parochial electors, may at any time convene a parish meeting.

Note. Parish meeting. â With regard to the assembly of the parish meeting, and to the chairman of a parish meeting, see the note to sect. 2, ante, pp. 6, 7.

Sect. 46. â (1.) A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough or of a board of guardians if heâ (a) is an infant or an alien; or (b) has within twelve months before his election, or since his election, received union or parochial relief; or (c) has, within five years before his election or since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option (1) See the Corrupt and Illegal Practices Prevention Act, 1883 (46 47 Vict. c. 51), ss. 6 (3), 10, 36, 3,7, 3.8 (5)Â 43 (4) 5 the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 48 Vict, c.70), ss. 2 (2), 8 (2), 22, 23, 28 (4); the Local Government Act, isSSJsi 52 Vict. c. 41), s. 75; and see sect. 48 of the present Act.

(2) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 48 Vict. c. 70), s. 13 (3), incorporated with the present Act by sect. 48 (3). 1 (3) 52 53 Vict. c. 69, s. 2.

of a fine, or to any greater punishment, and has 56 57 Vict. not received a free pardon, or lias, within or c 73 ' s- 4 ' during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors; or (d) holds any paid office under the parish council or district council or board of guardians, as the case may be; or (e) is concerned in any bargain or contract entered into with'the council or board, or participates in the profit of any such bargain or contract or of any work done under the authority of the council or board.

(2.) Provided that a person shall not be disqualified for being elected or being a member or chairman of any such council or board by reason of being interested—(a) in the sale or lease of any lands or in any loan of money to the council or board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood; or (b) in any newspaper in which any advertisement relating to the affairs of the council or board is inserted; or (c) in any contract with the council or board as a shareholder in any joint stock company; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

(3.) Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain or contract, or participates in any such profit, as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.

(4.) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when 56 57 Vict. he obtains his discharge with a certificate that his banker 73, s. 46. ru pt C y W as caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

(5.) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor.

(6.) If a member of a council of a parish, or of a district other than a borough, or of a board of guardians, is absent from meetings of the council or board for more than six months consecutively, except in case of illness or for some reason approved by the council or board, his office shall on the expiration of those months become vacant.

(7.) Where a member of a council or board of guardians becomes disqualified for holding office, or vacates his seat for absence, the council or board shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the clerk of the council or board, and notified in such manner as the council or board direct, and the office shall thereupon become vacant.

(8.) If any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds.

(9.) This section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council, and in the case of London auditors as if they were members of a district council.

Note. Union or Parochial Relief. With regard to relief granted to married women and children, the Poor Law Amendment Act, 1834, 1 contains the following enactments:—

Sect. 56 2 " All relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, not being blind or deaf and dumb, shall be considered as given to the husband of such wife, or to the father of such child or children, as the case may be, and any relief given to or on account of any child or children under the age of sixteen of any widow, shall be considered as given to such widow."

Sect. 57 3 " Every man who from and after the passing of this Act shall marry a woman having a child or children at the time of such marriage, whether such child or children be legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with (1) 4 5 Will. IV. c. 76. (2) lb. s. 56. (3) lb. s. 57.

all relief, or the cost price thereof, granted to or on account of 5 6 57 Vi ct-such child or children until such child or children shall c- 73. s- 46, n. respectively attain the age of sixteen, or until the death of the mother of such child or children; and such child or children shall, for the purposes of this Act, be deemed a part of such husband's family accordingly."

Sect. 71. 1 " Every child which shall be born a bastard after the passing of this Act shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen, or shall acquire a settlement in its own right, and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family until such child shall attain the age of sixteen; and all relief granted to such child while under the age of sixteen shall be considered as granted to such mother: Provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female."

The Married Women's Property Act, 1882, 2 provides that " A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him bylaw to maintain her children or grandchildren."

Whether this enactment has the effect of rendering relief given to the children of a married woman with separate property relief to her so as to entail any disqualification on her appears not to have been decided.

The Elementary Education Act, 1876, 3 provides that a parent of children whose school fees are paid by the guardians under that Act is not by reason of such payment to "be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification."

The Vaccination Act of 1867, 4 provides that " the vaccination, or the surgical or medical assistance incident to the vaccination, of any person in a union or parish. performed or rendered by a public vaccinator, shall not be considered to be parochial relief, alms, or charitable allowance to such person or his parent, and no such person or his parent shall by reason thereof be deprived of any right or privilege, or be subject to any disability or disqualification."

Under the Reform Act, 1832, 5 which disqualifies for the parliamentary franchise persons who have within a given period received parochial relief, it has been held



that, though persons may be compelled to contribute towards the maintenance of their parents and grandparents, relief granted to a (1) 4 5 Will. IV. c. 76, s. 71. (4) 30 3 1 vict- c- 8 4 s- 26- (2) 45 46 Vict. c. 75, s. 21. (5) 2 Will. IV. c. 45. s- 3 6- (3) 39 40 Vict. c. 79, s. 10.

56 57 Vict. person's parents or grandparents does not disqualify such c. 73, s. 46, n. person. 1

Under the same Act it was held, at the trial of an election petition, that relief given to a child did not disqualify the child's grandparent with whom the child lived. 2

In the same case, Blackburn, J., expressed an opinion that relief given by way of loan and duly repaid would not disqualify the recipient, 3 but it is difficult to understand the grounds of this opinion.

Excusal of payment of the poor rate on account of poverty under the Poor Relief Act, 1814, 4 is not parochial relief within the meaning of the Reform Act, 5 though of course it would lead to the loss of any qualification depending upon the payment of the poor rate.

Employment during time of distress by guardians, where the pay was not to commensurate with the work done but with the wants of the person employed, was held to be parochial relief within the meaning of the last-mentioned Act. 6

Conviction of crime. â Under a provision of the Elementary Education Act, 1870, 7 providing that if a member of a school board should be " punished with imprisonment for any crime," he should cease to be a member, it was held that a member imprisoned on summary conviction in Ireland under the Criminal Law and Procedure (Ireland) Act, 1887, 8 lost his seat. 9

Bankruptcy. â The provisions of the Bankruptcy Acts, 10 disqualifying bankrupts from certain offices appear to be superseded by the present section as regards the offices to which the section refers.

The Court has power to grant a certificate, such as is referred to in sub-section (4), under the Bankruptcy Act, 1883, n and the refusal of such a certificate is subject to appeal. As to the meaning of the expression bankruptcy caused by misfortune without misconduct, see the cases cited below. 12 (1) Trotter v. Trevor (1862), 13 (6) Magarrill v. Whitehaven C. B. (N. s.) 48; K. G. 531; 32 overseas (1885), 16 Q. B. D. L. J. C. P. 59; 9 Jur. (N. s.) 443 5 242; 55 L. J. Q. B. 38; 53 L. T. 7 L. T. 678; 11 W. R. 92; Cf. Reg. 667; 34 W. R. 275; 49 J. P. 743; v. Ireland (1868), L. R. 3 Q. B. Colt. 448.

130; 37 L- J- Q- B. 73 5 7 L- T. (7) 33 34 Vict. c. 75, Sched. II., 466; 16 W. R. 358; 9 B. S. 19, Part i., rule 14. decided on the 5 6 Will. IV. (8) 50 51 Vict. c. 20â the so- c. 76, s. 9, now repealed. called " Coercion " Act.

(2) Oldham election petition Cob (9) Conybeare v. London school belt v. Hibbert) (1869), 1 O'M H. board) (1890), L. R. 1891 1 Q. B. 151, at p. 160; S. C. 20 L. T. 302, 118; 60 L. J. Q. B. 44; 63 L. T. at p. 309. 651; 39 W. R. 288; 55 J. P. 151; (3) lb., 1 O'M. H., p. 161; 17 Cox C. C. 191.

20 L. T., p. 309. (10) Bankruptcy Act, 1883 (46 (4) 54 Geo. III. c. 170, s. 11. 47 Vict. c. 52) s. 32; Bankruptcy (5) Mashiter v. Dunn (1848), Act, 1890 (53 54 Vict. c. 71), 6 C. B. 30; 18 L. J. C. P. 13; s. 9.

S. C. nom. *Mashiter v. Lancaster* (11) 46 47 Vict. c. 52, s. 32. (lozun clerk), 2 Lutw. Reg. Cas. (12) *Re Burgess* (1887), 57 L. T. 112. 200; 35 W. R. 702; 4 M. B. R. Composition with creditors. â The Public Health Act, 1875, 1 56 57 Vict.

provided that "a person who is a bankrupt or whose affairs are c- 73. s- 4 6 Â under liquidation by arrangement or who has entered into any composition with his creditors, shall be incapable, so long as any proceedings in relation to such bankruptcy liquidation or a composition are pending, of being elected member of a local board." This provision was held 2 not to disqualify a person who had assigned all his property by deed to a trustee for the benefit of those of his creditors who should sign the deed, where the deed mentioned no sum as a composition to be paid on the debts scheduled as due to the creditors, and contained a clause discharging the debtor from all debts due to the signing creditors; the Court considering that the deed was not a composition with creditors within the meaning of the Act.

Interest in a contract, Â c. â Many Acts of Parliament both general and local contain provisions either disqualifying persons interested in a contract with a local authority to be members of the authority, or simply forbidding members of the authority to contract with the authority; and upon such provisions, which of course differ considerably from one another in terms, a considerable number of cases have been decided. It will, however, be necessary, in considering how far any such case may be regarded as an authority on the interpretation of the present section, to have regard to the exact terms of the enactment on which the case was decided.

The present enactment as respects the nature of the interest that is to disqualify, appears to be taken in substance from an enactment in the Public Health Act, 1875, 3 which provided that subject to certain exceptions a member of a local board who "in any manner is concerned in any bargain or contract entered into by such board, or participates in the profit thereof, or of any work done under the authority of this Act in and for the district" of the local board, should cease to be a member of the board.

A contract with an authority will apparently, under the present section, entail the disqualification of a person concerned in it although, owing to some informality, it may be unenforceable. 4

The two following cases may be referred to on the question whether the disqualification in respect of a contract will cease when the contract is completely executed, and it merely remains for the contractor to receive payment.

186; *Re Campbell*, Lord Colin, Q. B. D. 269; 56 L. J. M. C. 33; 1888), 20 Q. B. D. 816; 59 L. T. 51 J. P.-soo.

194; 36 W. R. 582; 5 M. B. R. (3) 38 39 Vict. c. 55, Sched. II., 94. rule 64, repealed by the present (1) 38 39 Vict. c. 55, Sched. Act.

II., rule 5, repealed by the present (4) *Reg. v. Francis* (1852), 18 Act. Q. B. 526; 21 L. J. Q. B. 304; (2) *Reg. v. Cooban* (1886), 18 16 Jur. 1045.

56 57 Vict. The first of these cases, 1 arose under enactments providing c. 73, s. 46, n. that, subject to certain exceptions, a person should not "be qualified to be elected or to be " a councillor or alderman of a borough " during such time as he " should " have directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of" the council of the borough, 2 but that a person should not be disqualified under the foregoing enactment "by reason only of his having

or having had. any share or interest. in any security for the payment of money only." 3 One L. contracted with commissioners for supplying a borough with water, to execute works for them, but gave up the contract after executing portions of the works, and it was agreed between him and the commissioners by deed that they should pay him a certain balance in certain events. The deed contained mutual releases, and covenants by L. not to molest the commissioners, that he had not injured the title, and for further assurances. The council of the borough subsequently succeeded to the powers, Sic. of the commissioners and became bound to L. under this deed. It was held that L. was not disqualified to be a councillor of the borough, as the deed in question was a " security for the payment of money only " the covenants on L.'s part being merely ancillary to the main object of the deed.

In the second case, 4 which arose under an enactment 5 which disqualifies for membership of the House of Commons any person who contracts for the public service " during the time that he shall execute, hold, or enjoy any such contract. or any benefit or emolument arising from the same," it was held that a person was not disqualified who had completely executed a contract for the public service but had not received the payment due to him under it.

It seems that the present section will have the effect of disqualifying for membership of an authority not only persons who themselves contract with the authority, but also any person who wittingly executes work or supplies goods for the authority under a sub-contract with such persons.

This was held to be the effect of the provision in the Public Health Act, 1875, 6 quoted ante, p. 197 in a case 7 where a contractor agreed with a local board to make alterations in certain gas fittings and employed a member of the board to (1) Lefeitvrew Lankester (1854), 1882 (45 46 Vict. c. 50), s. 12.

3 E. B. 530; 2 C. L. R. 1426; (4) Royse v. Birley (Manchester 23 L. J. Q. B. 254; 18 Jur. 894; election petition) (1869) L. R. 4 C. P.

2 W. R. 307. 296; 38 L. J. C. P. 203; 20 L. T.

(2) Municipal Corporations Act, 1862, 17 W. R. 827.

1835 (5 6 Will. IV. c. 76), s. 28, (5) 22 Geo. III. c. 45, s. 1.

now repealed. (6) 38 39 Vict. c. 55, Sched. II., (3) 5 6 Vict. c. 104, s. 7; this rule 64, repealed by the present and the last-mentioned enactment Act.

are now repealed and are replaced (7) Tomkins v. Jolliffe (1887), by the Municipal Corporations Act, 51 J. P. 247.

erect the necessary scaffolding; and it was decided accord- 56 57 Vict. ingly that the latter thereby became disqualified for member- c- 73. s. 4 6 n. ship of the board.

This decision was followed in the Court of Appeal in a subsequent case 1 on the same enactment where the circumstances were very similar. 2

In an earlier case on the other hand, 3 decided under sect. 28 of the Municipal Corporations Act, 1835, 4 the material parts of which are set out ante, p. 198, it was held that a person who had sold some iron to a contractor to be used in the erection of railings which the contractor had agreed to erect for a borough council, was not disqualified for membership of the council.

With regard to the meaning of being " concerned " in a contract the following further cases may be referred to.



In a case 5 decided under an enactment 6 providing that, in case any member of a metropolitan vestry should "in any manner be concerned or interested in any contract or work made with or executed for" such vestry, he should cease to be a member thereof, a person who had lent money to a contractor for the purpose of enabling him to carry out a contract with a vestry, and had taken an assignment of the contract by way of security for the loan, was held to be disqualified for membership of the vestry.

In another case, 7 decided under a section of the Municipal Corporations Act, 1882, 8 providing that "a person shall be disqualified for being elected and for being a councillor, if and while he has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council" of the borough, a person was held to be disqualified who had, in partnership with another, contracted with the council, but had dissolved the partnership and assigned the contracts to his former partner, remaining liable however, under the contracts and the bonds securing the due performance of the same, to the council, who were not parties to the assignment.

The following cases may be referred to on the question as to what amounts to a "contract" within the meaning of the section.

A person was held to be disqualified for the office of councillor of a borough under the provisions of the Municipal (1) *Nutton v. Wilson* (1889), 22 now repealed.

Q. B. D. 744; 58 L. J. Q. B. 443; (5) *Hunnings v. Williamson* 37 W. R. 522; 53 J. P. 644 (1883), 11 Q. B. D. 533; 52 L. J.

(2) Cf. *West v. Andreivs* (1822), Q. B. 416; 49 L. T. 361; 32 5 B. Aid. 328; 1 B. C. 77; W. R. 267; 48 J. P. 132.

2 D. R. 184; *Towsey v. White* (6) *The Metropolis Management* (1826), 5 B. C. 125; 7 D. R. Act, 1855 (18 19 Vict. c. 120), 810. s. 54, repealed by the present Act.

(3) *Le Feuvre v. Lankester*, ubi (7) *Cox v. Ambrose* (1890), 60 sup. L. J. Q. B. 114; 55 J. P. 23- (4) 5 6 Will. IV. c. 76, s. 28, (8) 45 46 Vict. c. 50, s. 12.

56 57 Vict. Corporations Act, 1835, 1 already quoted, where a lease of c. 73, s. 46, n. certain premises had been granted by the council to a trustee for his benefit, 2 there being no exception when that case was decided in favour of a person merely interested in a lease.

Under a local Act providing that no person should be capable of acting as a commissioner in the execution of the Act who should be interested in any contract for furnishing supplying or selling any article, matter or thing to be employed or made use of for the purposes of the Act, it was held that a person who had contracted with the commissioners to sell them a plot of land to be used for the purposes of the Act was not disqualified from acting, though the conveyance had not been executed. 3

In another case 4 under the Commissioners Clauses Act, 1847, 5 which provides that "any person who at any time after his appointment or election as a commissioner shall be concerned or participate in any manner in any contract under the authority of the" special Act incorporating the enactment, "shall thenceforth cease to be a commissioner," it was held that an invoice in the hand-writing of the defendant, charging the commissioners for lime supplied to them on several occasions during four months, was evidence that the defendant was concerned, or had participated, in a contract with the commissioners.

In a case 6 under the above quoted provisions of the Public Health Act, 1875, 7 it appeared that H. did work for a local board at the request of their surveyor, because the surveyor was unable to get the work done by any one else in the time, and delay would have occasioned great expense, that H. made no regular bargain as to the work, that he was paid some £ 0 for it, and that he made no profit out of the transaction; and it was held that there was ample evidence that H. was concerned in a contract with the board.

In a recent case 8 under the provisions of the Municipal Corporations Act, 1882, 9 already referred to, it appeared that one G. was appointed chemist to a municipal corporation and that, in virtue of such appointment, he was entitled to supply goods in the way of his business to the police and the fire brigade. G. was afterwards elected a member of the town council, but did not resign his appointment as chemist to the corporation; and it appeared that on one occasion he had, (1) 5 6 Will. IV. c. 76, s. 28, (6) *Fletcher v. Hudson* (No. 2) now repealed. (18S1), 7 Q. B. D. 611; 51 L. J.

(2) *Simpson v. Ready* (1844), 12 Q. B. 48; 46 L. T. 125; 30 W. K. M. W. 736; 1 D. L. 1024; 349; 46 J. P. 372.

13 L. J. Ex. 193. (7) 38 39 Vict. c. 55, Sched. II., (3) *Woolley v. Kay* (1856), 1 lule 64, repealed by the present H. N. 307; 25 L. J. Ex. 351. Act.

(4) *Nicholson v. Fields* (1S62), 7 (8) *Nell v. Longbottom* Louth H. N. 810; 31 L. J. Ex. 233; petition), "Times" newspaper, 2SU1 10 W. R. 304. February, 1894.

(5) 10 II Vict. c. 16, s. 9. (9) 45 46 Vict. c. 50, s. 12.

after his election, supplied four pennyworth of oil to a member 56 57 Vict, of the fire brigade on behalf of the corporation. It was held c- 73. s- 46, n. that G. was disqualified.

Interest in lease. â It was held, on words in the Public Health Act, 1875, 1 precisely similar to those in the first part of sub-sect. (2, a) of the present section, that the exception was not confined to the case of a lease to a local board but extended to a lease from the board: where accordingly a member of a local board took a sewage farm on lease from them, he was held to be entitled to continue to hold his seat on the board. The lease in question contained covenants on the lessee's part as to the disposal of sewage, c, but it was held that these covenants were ancillary to the main object of the lease and that the lessee was therefore not disqualified by reason of having entered into the same. 2

In a recent case 3 arising under the Municipal Corporations Act, 1882, 4 it was held that a member of a town council who let a building to the council for one day for the purposes of a polling station, did not become disqualified, as the case came within the exception in favour of a lease of land.

Disqualifications under other statutes. âThe disqualifications provided for in the present section are not the only statutory disqualifications that will apply to the offices mentioned in the section.

By sect. 48 of the Poor Law Amendment Act, 1834, 5 no person is to " have the management of the poor in any way whatever, who shall have been convicted of felony, fraud, or perjury." Persons convicted of these offences will therefore be disqualified for the office of guardian. 6

Sect. 14 of the Poor Law Amendment Act, 1842, 7 enacts that: "No person, during the time for which he may serve or hold the office of assistant overseer of any parish, nor any paid officer engaged in the administration of the laws for relief i) 38 39 Vict. c. 55, Schd. II., that where in the present Act en-rule 64, repealed by the present actments relating to the qualification Act. 'or an office are spoken of, enact- (2) Reg. v. Gaskarth (1880), 5 ments relating to disqualifications Q. B. D. 321; 49 L. J. Q. B. 509; are not included. If this were not 42 L. T. 688 j 28 W. R. 596; 44 the proper construction of the pro-J. P. 507. visions of the Act in question, sub- (3) Nell v. Longbottom, ante, p. sect. (9) of the present section would, 200. in view of sect. 31 (1), be super- (4) 45 46 Vict. c. 50, s. 12. fluous. See also sect. 3 (8), where (5) 4 5 Will. IV. c. 76, s. 48. "ceasing to be qualified " and " be- (6) Sect. 20 (2) of the present coming disqualified"are mentioned Act repeals so much of any en as if they were different things, and actment "as relates to the qualifica sect. 79 (8), where " want of qualifi-tion of a guardian." And it might cation" can hardly be used as in-be argued that this provision ex eluding such a disqualification as tends to the enactment above referred arises where a member of a local to, and to other enactments dis board enters into a contract with qualifying various persons lor the the board.

office of guardian. But it seems (7) 5 6 Vict. c. 57, s. 14.

56 57 Vict, of the poor, nor any person who, having been a paid officer, c. 73, s. 46, n. s hall have been dismissed within five years previously from such office, under the provisions of the said first-recited Act, the Poor Law Amendment Act, 1834, 1 shall be capable of serving as a guardian; and no person receiving any fixed salary or emolument from the poor rates in any parish or union shall be capable of serving as a guardian in such parish or union."

The latter part of this enactment was held not to disqualify officers of a highway board, or of a school board, for the office of guardian, though their salaries are paid out of funds into which the overseers pay contributions out of the poor rate in accordance with precepts directed to them. 2

The Corrupt and Illegal Practices Prevention Act, 1883, 3 and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, disqualify persons found guilty of various offences against election law at parliamentary and other elections for any "public office;" and define the expression "public office " in terms that will include any of the offices referred to in the present section. 5

The Public Bodies Corrupt Practices Act, 1889, 6 provides that a person convicted under that Act may be adjudged incapable of holding a " public office," and defines the expression " public office " in terms that will include any of the offices referred to in the present section with the exception possibly of the office of auditor for a parish in London.

Disqualification for office of guardian extended to office of rural district councillor. â Sub-sect. (5) will have the effect of extending the operation of the provisions in the Poor Law Amendment Acts, 1834 and 1842, above referred to, 7 to the office of rural district councillor.

It may perhaps also disqualify a person who contracts with a board of guardians for the office of rural district councillor for a parish or area in the union; but this is not



clear, as such a person, though disqualified for the office of guardian in a particular union, can hardly be said to be " disqualified for being a guardian " in general terms.

Vacation of office. â It is submitted that sub-sect. (7) will not extend to a case where a member of a board of guardians or other body merely ceases to hold the necessary qualification for the office, 8 but that it is confined to cases where such a person becomes positively disqualified under the present section or some such enactment as those above referred to.

It seems that where a member of an authority to which (1) 4 5 Will. IV. 0. 76, s. 48. 2S(4).

(2) Reg. v. Rcnulins; Reg. v. (5) 46 47 Vict. c. 51, s. 64; 47 Dibbin (1885), 15 Q. B. D. 382; 48 Vict. c. 70, s. 34.

54 L. J. Q. B. 557. (6) 52 53 Vict. c. 69, s. 2.

(3) 46 47 Vict. c. 51, ss. 6 (3), (7) 4 5 Will. IV. c. 76, s. 48; 38 (5), 43. 5 6 Vict. c. 57, s. 14.

(4) 47 48 Vict. c. 70, ss. 2, 23, (8) See note (6), ante, p. 201.

the present section applies becomes disqualified for his office, 56 57 vlct- or vacates his seat for absence, the office must be properly c- 73. s- 46 Â n- declared vacant under sub-sect. (7) before an election can be held to fill the vacancy; and that an attempt on the part of the member who has become disqualified, or has vacated his seat for absence, to resign his office will be inoperative and will not obviate the necessity of declaring the office vacant. 1

Penalty. â In a case 2 arising under the provisions of the Municipal Corporations Act, 1835, 3 quoted above, and another section of the same Act, 4 which provided that if any person should act as councillor after he should have " become disqualified" he should forfeit the sum of 50, it was held that no penalty was incurred by a councillor, who entered into a contract with his council, in respect of acts done by him as councillor after the contract had come to an end.

A member of an authority speaking at a meeting as a member but not voting was held to " act" as a member in a case arising under a local Act imposing a penalty on members of an authority who should act in matters in which they were interested." 5

Metropolitan district boards. â The present section, it will be observed, does not extend to members of these boards. Though this is so, sect. 54 of the Metropolis Management Act, 1855,Â which contains provisions, similar to those in sub-sect. (i, c, d, e) of the present section, applicable to members of these boards, as well as to members of metropolitan vestries and London auditors, is nevertheless wholly repealed by sect. 89 of the present Act. After the appointed day, therefore, there will apparently be nothing to hinder a member of a district board of works in London from holding office under, or contracting with, his own board.

Why safeguards against jobbery should be considered unnecessary in the case of these bodies alone among local authorities it is difficult to understand.

Sect. 47.â (1.) If at the annual election of parish Supplemen-councillors any vacancies are not filled by election, such tal provisions number of the retiring councillors as are not re-elected, uncus" and are required to fill the vacancies, shall, if willing, continue to hold office. The councillors so to continue shall be those who were highest on the poll at the previous election, or if the numbers were equal or there was no poll,

as may be determined by the parish meeting, (1) *Hardtvice v. Brown* (1873), (3) 5 6 Will. IV. c. 76, s. 28, L. R. 8 C. P. 406; 28 L. T. 502; now repealed.

21 W. R. 639; *Reg. v. Welchpool* (4) lb. s. 53, now repealed.

mayor, c.) (1876), 35 L. T. 594. (5) *Charlesworth v. Regard* (2) *Lewis v. Can-* 1S76), 1 Ex. D. (1834), 1 C. M. R. 49S; 4 Tyr. 484; 46 L. J. Ex. 314; 36 L. T. 824; 4 L. J. Ex. 89.

44; 24 W. R. 940. (6) 18 19 Vict. c. 120, s. 54.

The Local Government Act, 1894.

Part 55 57 Vict.

Supplemental provisions as to elections, polls, and tenure of office.

or if not so determined, by the chairman of the parish council.

(2.) A retiring parish councillor or chairman of a parish council or parish meeting shall be re-eligible.

(3.) A parish councillor may, by notice in writing to the chairman of the council, resign his office, and a chairman of a parish council or parish meeting may resign his chairmanship by notice in writing to the council or meeting.

(4.) A casual vacancy among parish councillors or in the office of chairman of the council shall be filled by the parish council, and where there is no parish council, a casual vacancy in the office of chairman of the parish meeting shall be filled by the parish meeting, and the person elected shall retire from office at the time when the vacating councillor or chairman would have retired.

(5.) If any parish council become unable to act by reason of a want of councillors, whether from failure to elect or otherwise, the county council may order a new election, and may by order make such provision as seems expedient for authorising any person to act temporarily in the place of the parish council and of the chairman thereof.

Sect. 48.â (1.) The election of a parish councillor shall be at a parish meeting, or at a poll consequent thereon.

(2.) Rules framed under this Act by the Local Government board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act, and shall provide, amongst other thingsâ (i.) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more; (ii.) for preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district; (iii.) for preventing an elector at an election for a parish divided into parish wards from subscribing a nomination paper or voting for more than one ward; (iv.) for fixing or enabling the county council to fix the day of the poll and the hours during which the poll is to be kept open, so, however, that the poll shall always be open between the hours of six and eight in the evening; (v.) for the polls at elections held at the same date and in the same area being taken together, except 5 6 57 Vict, where this is impracticable; c ' 73, s ' 4 (vi.) for the appointment of returning officers for the elections. (3.) At every election regulated by rules framed under 35 36 Vict, this Act, the poll shall be taken by ballot, and the Ballot 4 7 3 Â ' 48 y Act, 1872, and the Municipal Elections (Corrupt and c 7 q Illegal Practices) Act, 1884, and sections seventy-four 45 46 Vict, and seventy-five and Part IV. of the Municipal Corpora- c. 50. tions Act, 1882, as amended by the last-mentioned Act (including the penal provisions

of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided thatâ (a.) section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and (b.) section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act. (4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act, shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of guardians and of district councillors of a county district not a borough, and of members of the Local Board of Woolwich, and of a vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same. Provided thatâ (a.) the provisions as to resignation shall not apply to guardians, and district councillors of a rural district shall be in the same position with respect to resignation as members of a board of guardians; and (b.) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy 56 57 Vict. occurs, and the vacancy shall be filled at the c 73, s. 48. next ordinary election; and (c.) the rules may provide for the incidence of the charge for the expenses of the elections of guardians being the same as heretofore.

(5.) If any difficulty arises as respects the election of any individual councillor or guardian, or member of any such local board or vestry as aforesaid, or auditor, and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

(6.) Any ballot boxes, fittings, and compartments provided by or belonging to any public authority, for any election (whether parliamentary, county council, municipal, school board, or other), shall, on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election under this Act, upon such conditions and either free of charge or, except in the prescribed cases, for such reasonable charge as may be prescribed.

(7.) The expenses of any election under this Act shall not exceed the scale fixed by the county council, and if at the beginning of one month before the first election under this Act a county council have not framed any such scale for their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election.

(8.) This section shall, subject to any adaptations made by the said rules, apply in the case of every poll consequent on a parish meeting, as if it were a poll for the election of parish councillors.



Note. Elections. â The elections expressly directed by the Act to be held in accordance with rules framed under the Act are:â elections of parish councillors, 1 guardians, 2 district councillors of a county district other than a borough, 3 members of metropolitan vestries under the Metropolis Management Acts, 4 members of the local board of Woolwich, 5 and auditors for parishes in London elected under the Metropolis Management Acts. 0

Inasmuch moreover as by sub-sect. (8) the present section is to apply in the case of every poll consequent on a parish (1) Sect. 3(6). (4) Sect. 31 (1).

(2) Secc. 20 (5), and see sect. 30. (5) lb.

(3) Sects. 23 (5), 24 (4). (6) lb.

meeting as if it were a poll for the election of parish councillors, 56 57 Vict.

the provisions of the section, so far at all events as they relate c- 73. s- 4 8 Â "â to a poll, will apply in the case of any election or appointment by a parish meeting if a poll is held. For example it will apply to the election of a chairman of a parish meeting under sect. 19 (1) and to the election of overseers where they are elected by the parish meeting under sect. 19 (5). How far the portions of the Municipal Corporations Act, 1882 referred to in sub-sect. (3) and the Municipal Elections (Corrupt and

Illegal Practices) Act, 1884, 2 will apply in the case of a poll consequent on a parish meeting, other than a poll for the election of parish councillors, is not clear.

The enactments referred to in sub-sect. (3) will be found in the Appendix. A short sketch of their provisions may, however, not be out of place at this point.

The Ballot Act, 1872, 3 is mainly concerned, as its name implies, with the manner in which a poll at an election by ballot is to be conducted. Sect. 2 of the Act provides in outline for the manner in which a ballot paper is to be marked; lays down the requisites for the validity of a vote given by ballot; and provides in outline for the manner in which, after the poll is closed, the ballot papers are to be dealt with and counted, and for the manner in which the result of the poll is to be declared. The remainder of the Act, so far as it applies to municipal elections, or to elections under the present Act, contains provisions which are practically merely auxiliary to those contained in the second section. Thus, in the body of the Act are contained various provisions intended as safeguards against any possible fraud connected with the poll or any possible infringement of the secrecy of the ballot, provisions as to the powers and duties of the various officials employed in taking the poll, c. And in the schedules to the Act most minute regulations are made as to the precise manner in which votes are to be given, both in ordinary cases and in cases where, owing to physical or other causes, a voter is unable to vote in the ordinary manner, and in which after the conclusion of the poll the ballot papers are to be counted and otherwise dealt with.

Sect. 74 of the Municipal Corporations Act, 1882, 4 relates to fraudulent dealings with nomination papers, and sect. 75 of that Act, 5 imposes penalties for defaults upon the part of persons whose duty it is to prepare registers of electors and to conduct elections.

Part IV. of the same Act, 0 so far as it is unrepealed, relates almost exclusively to the manner in which an election may be called in question by an election petition.

(1) 45 46 Vict. c. 50, ss. 74, (4) 45 46 Vict. c. 50, s. 74. 75, and Part IV. (5) lb. s. 75.

(2) 47 48 Vict. c. 70. (6) lb. Part IV.

(3) 35 36 Vict. c. 33.

56 57 Vict. The Municipal Elections (Corrupt and Illegal Practices c 73-s-48) "â Act, 1884), x besides making further provisions as to election petitions, contains most elaborate and stringent provisions intended to guard against corruption at elections.

The Act in the first place imposes penalties for acts of corruption in the ordinary sense of the term, such as bribery or intimidation. Secondly it forbids various practices in connection with elections, which though not in themselves necessarily other than innocent, afford a convenient cloak for corruption:â for example, the payment of electors other than regular advertising agents for the exhibition of election placards.

Careful study of the Act is imperative upon any person who proposes to take active steps in promoting his own or any other person's candidature at any election to which the Act applies; and an attempt to enumerate in shortened language the various practices it forbids, would probably be merely misleading. A few observations on the consequences of offences against its provisions may, however, be made. Offences against the Act in the first place subject the guilty person to penalties ranging from fine to a long term of imprisonment, and also to loss of capacity for holding public office or voting at elections. Secondly a vote tainted by such an offence will, if the election is petitioned against, be struck off as void. Thirdly where the offence has been committed by a person for whose acts a candidate at the election, upon the peculiar principles of election law, 2 is responsible, the candidate, if the election is petitioned against, will in most cases forfeit his seat if he was successful, and will also in some cases become subject to certain incapacities to hold office. Lastly, if offences of the kind have been very prevalent in connection with an election, the election may be set aside, though the responsibility is not brought home to the candidate, and though it is not shown with certainty that the result, of the election was affected by tainted votes.

Hours of poll. â By sect. 31 (1) the Elections (Hours of Poll) Act, 1885, 3 which requires the poll to be open from 8 a. m. to 8 p. m., is to apply to elections under the present Act of members of a metropolitan vestry or of the local board of Woolwich, and to elections of auditors for parishes in London.

Expenses of elections, acceptance of office, ore. â The portions of the Municipal Corporations Act, 1882, 4 referred to in sub-sect. (4), as well as those referred to in sub-sect. (3), will be found in the Appendix.

Resignation of guardians. â Under the Poor Law Amendment (1) 47 cst 48 Vict. c. 70. " c 50).

(2) See the note in the Appendix (3) 4S Vict. c. 10.

to sect. 100 of the Municipal Cor (4) 45 46 Vict. c. 50.

porations Act, 1882 (45 46 Vict.

Act, 1842, l the Local Government Board " may accept the 5 6 57 Vict. resignation of any person elected as a guardian tendered for c- "3 s- 48, Â â any cause" which they " may deem reasonable."

Expenses of elections of guardians. â The incidence of these expenses is at present determined by orders of the Local Government Board or their predecessors. 2

Sect. 49. â Where a parish meeting is required or Provision as authorised in pursuance of this Act to be held for a ward J JKt for or other part of a parish, thenâ

part 0 fÂ (a.) the persons entitled to attend and vote at the parish. meeting, or at any poll consequent thereon, shall be the parochial electors registered in respect of qualifications in that ward or part; and (b.) the provisions of this Act with respect to parish meetings for the whole of a parish, including the provisions with respect to the convening of a parish meeting by parochial electors, shall apply as if the ward or part were the whole parish.

Note. Parish meeting for part of parish.â-With regard to parish meetings for a parish ward or other part of a parish, see sects. 7 (4), 18, 37, 53, 56.

Sect. 50. â If, in the case of a rural parish or of any Supple-urban parish in respect to which the power of appointing mental overseers has been transferred under this Act, notice in overseers, the prescribed form of the appointment of overseers is not received by the guardians of the poor law union comprising the parish within three weeks after the fifteenth day of April, or after the occurrence of a vacancy in the office of overseer, as the case may be, the guardians shall make the appointment or fill the vacancy, and any overseer appointed by the guardians shall supersede any overseer previously appointed whose appointment has not been notified. Any such notice shall be admissible as evidence that the appointment has been duly made.

Note. Appointment of overseers. â With regard to the appointment of overseers, see sect. 5, and the note to that section.

(1) 5 6 Vict. c. 57, s. 11. election of Guardians, dated 14th (2) See the General Order of the February, 1877, Arts. 32-35. Local Government Board as to the 56 57 Vict. c. 73, s. si.

#### The Local Government Act, 1894. Part Parish and District Councils.

Public Sect. 51. â A public notice given by a parish council for notices. the purposes of this Act, or otherwise for the execution of their duties, and a public notice of a parish meeting, shall be given in the manner required for giving notice of vestry meetings, and by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears to the council or to the persons convening the meeting desirable for giving publicity to the notice.

Note. Publication of notices. â The Vestries Act, 1818 required notice of a vestry meeting to be given " by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same," fairly written or printed, on the principal door of such church or chapel." Publication of the notice in church, was, however, abolished by the Parish Notices Act, 1837, 2 sect. 2 of which 3 enacts that " all proclamations or notices, which under or by virtue of any law or statute, or by custom or otherwise, have been heretofore made or given in churches or chapels during or after divine service, shall be reduced into writing, and copies thereof either in writing or in print, or partly in writing and partly in print, shall, previously to the commencement of divine service on the several days on which such proclamations or notices have heretofore been made or given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place; and such notices when so affixed shall be in lieu of and as a substitution for the



several proclamations and notices so heretofore given as aforesaid, and shall be good, valid, and effectual to all intents and purposes whatsoever."

The notice must be published on or near the principal or usual door of every church or chapel of the established church within the parish in which divine service is performed; but it need not be affixed at all the doors of each church or chapel, nor at the doors of a church in which divine service has ceased to be performed, nor at doors of buildings other than churches or chapels, although divine service, according to the rites of the established church, be performed there; nor need it be published at dissenting places of worship. 4

It is sufficient if the notice be affixed at the door of a church (1) 59 Geo. III. c. 69, s. 1, re (2) 7 Will. IV. and 1 Vict. c. 45.

pealed by sect. 89, post, so far as it (3) lb. s. 2.

relates to parish meetings and parish (4) Reg. v. Whipp (1843), 3 G. D.

councils under this Act. 372; 12 L. J. M. C. 64; 7 Jur.

before the usual afternoon service though after the usual 56 57 Vict, morning service. 1 c?3 s- 5! "â

Where an ecclesiastical parish contains more than one poor law parish the notice need only be published at the doors of churches and chapels within the poor law parish to which it relates."

Sect. 52.â (1.) Any power which may be exercised Supple-and any consent which may be given by the owners and mental, ratepayers of a parish or by the majority of them under JJJJJfj "f any of the Acts relating to the relief of the poor or under p Owners the School Sites Acts or the Literary and Scientific Institutions Act, 1854, so far as respects the dealing with 17 18 Vict, parish property or the spending of money or raising of a c- ll-rate may, in the case of a rural parish, be exercised or given by the parish meeting of the parish.

(2.) In a rural parish the power of making an application or passing a resolution given by section twelve of the Elementary Education Act, 1870, and by section forty-one 33 34 Vict. of the Elementary Education Act, 1876, to the electing g 9 7 " 40Vict body mentioned in the former section shall be transferred c to the parish meeting of the parish, and shall in cases under the latter section be exercisable by the like majority of the parish meeting, and, if a poll is taken, of the parochial electors, as is required by that section in the case of the said electing body, and rule two of the Second Part of the Second Schedule to the former Act with respect to the passing of such resolutions shall not apply.

(3.) The consent of justices shall not be required for the sale of land belonging to a parish which has been used for materials for the repair of highways or for the purchase of land with the proceeds of any such sale.

(4.) Where the legal estate in any property is vested in the churchwardens and overseers of any parish by virtue of the Poor Relief Act, 1819, nothing in the Charitable Trusts Acts, 1853 to 1891, shall be deemed to 59 Geo. III. require the consent of such churchwardens and overseers c- 12-in their capacity as a corporation under that Act, or of the parish council as their successors, to a vesting order under those Acts dealing with the said legal estate. Provided that nothing in this section shall affect any 194; Ormerodv. Chadwick (1847), 7 W. R. 422.

16 M. W. 367; 2 New Sess. Cas. (2) Reg. v. Marriott (1840), 12 697; 16 L. J. M. C. 143. A. E. 779; S. C. nom. Reg. v.

(1) *Birnley v. Metiley* (overseers) *Worcestershire* (justices), 4 P. D.

(1859), 1 E. E. 789; 28 L. J. 440. M. C. 152; 5 Jur. (N. s.) 914; 56 57 Vict, rights, powers, or duties of the churchwardens and over-c 73. s- 5 2- seers or the parish council, in cases where they have active powers of management.

(5.) All enactments in any Act, whether general or local and personal, relating to any powers, duties, or liabilities transferred by this Act to a parish council or parish meeting from justices or the vestry or overseers or churchwardens and overseers shall, subject to the provisions of this Act and so far as circumstances admit, be construed as if any reference therein to justices or to the vestry, or to the overseers, or to the churchwardens and overseers, referred to the parish council or parish meeting as the case requires, and the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect.

Note. Powers of owners and ratepayers under Acts relating to the relief of the poor. â The powers of owners and ratepayers under these Acts in relation to dealings with parish property have been referred to in the note to sect. 6, ante, pp. 57-60.

With regard to other powers of owners and ratepayers under these Acts, reference may be made to the enactments cited below. 1

School Sites Acts. â Under these Acts parish property to a limited extent may, with the consent of the owners and ratepayers, the guardians, and the Local Government Board, be granted or sold as the site for a school for poor persons, and for certain other purposes connected with education. 2 The powers of the guardians under these Acts, at all events as regards the conveyance of parish property by way of gift, appear not to be affected by the present Act. By the Elementary Education Act, 1870, 3 it may be mentioned, the operation of the Acts is extended so as to enable conveyances to be made under them of land required for the purposes of a school board, or of the managers of any public elementary school.

Literary and Scientific Institutions Act, 1854.â Under this Act 4 parish property may, to a limited extent, with the consent of the owners and ratepayers, the guardians and the Local Government Board, be granted as sites for literary, scientific and artistic institutions to which that Act applies. It would seem that the powers of the guardians under the Act, at all (1) Poor Law Amendment Act, (2) School Sites Act, 1841 (4 5 1834 (4 5 Will. IV. c. 76), ss. 23, Vict. c. 38), s. 6; and see School 36, 62; Poor Law Amendment Sites Act, 1849 (12 13 Vict. c. 49),

Act, 1844 (7 8 Vict. c. 101), ss. 29, s. 3; School Sites Act, 1851 (14 30; Poor Law Amendment Act, 15 Vict. c. 24).

1849 (12 13 Vict. c. 103), ss. 18, (3) 33 34 Vict. c. 75, ss. 20, 21, 20; Poor Law Amendment Act, (4) 17 18 Vict. c. 112.

1850 (13 14 Vict. c. 101), s. 4.

events as regards the conveyance of property by way of gift, 56 57 Vict. are unaffected by the present Act. c- 73- â 5 2 Â "â

Formation and dissolution of school board. â Sect. 12 of the Elementary Education Act, 1870, 1 enables an application for the establishment of a school board in any school district to be made to the Education Department by the persons who, if there

were a school board for the district, would elect such school board; and provides that upon such an application the Education Department may cause a school board to be formed for the district without such previous notices and inquiry as are required in ordinary cases.

Sect. 41 of the Elementary Education Act, 1876, 2 enables the like persons, by a majority of not less than two-thirds of those voting on the question, to apply in certain cases to the Education Department for the dissolution of a school board.

In general a rural parish is a school district under the Elementary Education Acts; but there are cases where a rural parish is not a separate school district.

Sale of lands used for materials for the repair of highways. Under sect. 48 of the Highway Act, 1835, 3 as amended by an Act of 1845 the highway surveyor of any highway parish is required, with the consent of the vestry and of the justices, to sell any lands belonging to the parish, or to the surveyor, which have been lawfully used for the purpose of obtaining materials for the repair of the highways and in which the materials have become exhausted, to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, and with the money arising therefrom, with the like consent, to purchase other lands in lieu thereof.

Under sect. 25 of the present Act the powers of the surveyor and of the vestry under these enactments are transferred to the rural district council. But if the operation of that section be postponed, the functions of the vestry will in some cases vest in the interim in the parish council or the parish meeting under sect. 6 (1, a) or sect. 19 (4), as the case may be. 5

It will be observed that the necessity of the consent of the justices under the enactments in question appears, by sub-sect. (3) of the present section, to be abolished as from the passing of the present Act. The words in sect. 48 of the Highway Act, 1835, however, referring to such consent are repealed by sect. 89, post, as from the appointed day only.

The Exhausted Parish Lands Act, 1876, 6 under which lands allotted partly for materials for the repair of highways and partly for other purposes may be sold when exhausted, is referred to in the note to sect. 6, ante, pp. 59, 60.

(1) 33 34 Vict. c. 75, s. 12. (5) See the note to sect. 13, ante, (2) 39 40 Vict. c. 79, s. 41. pp. n6, 117.

(3) 5 6 Will. IV. c. 50, s. 45. (6) 39 40 Vict. c. 62.

(4) 8 9 Vict. c. 71.

56 57 Vict. Vesting orders under the Charitable Trusts Acts. As has been seen in the note to sect 14, ante, pp. 131, 132, 133 provisions are contained in the Charitable Trusts Acts enabling an order to be made by a Court of competent jurisdiction or by the Charity Commissioners vesting the legal interest in charity lands in the official trustee of charity lands. By sect. 48 of the Charitable Trusts Act, 1853, however, no such order can be made as regards lands vested in a corporation without the consent of the corporation; and it is to this provision that sub-sect. (4) of the present section has reference.

Supplement- Sect. 53. (1.) Where on the appointed day any of the provisions of the Act is in force in a part only of a rural parish, the Act shall not apply in that part, but the powers, authority under the Act, or the parish meeting for that part, may transfer the powers,



duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.

(2.) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

(3.) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited", and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

(4.) The county council on the application of a parish (1) 16 17 Vict. c. 137, s. 48. council may, by order, alter the boundaries of any such S f 57 Vict. area if they consider that the alteration can properly be c 73 ' s 53-made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right.

Note. Adoptive Acts. â With regard to these Acts, see sect. 7, and the note to that section.

Joint Committee. â-With regard to the appointment of a joint committee under the present section, see sect. 57, and the note to that section.

Sect. 54.â (1.) Where a new borough is created, or Effect ou any other new urban district is constituted, or the area of P arison an urban district is extended, thenâ â constitution (a) as respects any rural parish or part of a rural parish 0 f urban which Avill be comprised in the borough or urban district. district, provision shall be made, either by the constitution of a new parish, or by the annexation of the parish or parts thereof to another parish or parishes, or otherwise, for the appointment of overseers and for placing the parish or part in the same position as other parishes in the borough or district, and (6) as respects any parish or part which remains rural, provision shall be made for the constitution of a new parish council for the same, or for the annexation of the parish or part to some other parish or parishes, or otherwise for the government of the parish or part, and (c) provision shall also where necessary be made for the adjustment of any property, debts, and liabilities affected by the said creation, constitution, or extension. (2.) The provision aforesaid shall be madeâ (a.) Where a new borough is created, by a scheme under section two hundred and thirteen

of the Municipal Corporations Act, 1882; 45 46 Vict. (b.) Where any other new urban district is constituted, c- 50-by an order of the county council under section fifty-seven of the Local Government Act, 1888; 51 52 Vict. (c.) Where the area of an urban district is extended, Â. 41. by an order of the Local Government Board under section fifty-four, or of the county council under section fifty-seven, as the case may be, of the Local Government Act, 1888.

The Local Government Act, 1894.

Part 50 57 Vict. (3.) Where the area of an urban district is diminished c 73 s. 54 this section shall apply with the necessary modifications.

Note. New boroughs and urban districts, Â c. â With regard to the formation of new boroughs and other urban districts, and the alteration of the boundaries of such areas, see the note to sect. s6, ante, p. 185. The sections of the Local Government Act, 1888, 1 referred to in the present section will be found in the Appendix.

Power to change name of district or parish.

Committees of parish or district councils.

Sect 55.â (1.) Where a parish is divided or united or grouped with another parish by an order in pursuance of this Act, each new parish or group so formed shall bear such name as the order directs.

(2.) Where a parish is divided by this Act, each parish so formed shall bear such name as the county council direct.

(3.) Any district council may, with the sanction of the county council, change their name and the name of their district.

(4.) Every change of name made in pursuance of this section shall be published in such manner as the authority authorising the change may direct, and shall be notified to the Local Government Board.

(5.) Any such change of name shall not affect any rights or obligations of any parish, district, council, authority, or person, or render defective any legal proceedings, and any legal proceedings may be continued or commenced as if there were no change of name.

Sect. 56.â (1.) A parish or district council may appoint committees, consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval.

Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highway Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract.

(2.) Where a parish council have any powers and duties which are to be exercised in a part only of the (1) 5152 Vict. c. 41, ss. 54,57.

parish, or in relation to a recreation ground, building, or 56 57 Vict. property held for the benefit of a part of a parish, and c ' 73 ' s ' 5 ' the part has a defined boundary, the parish council shall, if required by a parish meeting held for that part, appoint

annually to exercise such powers and duties a committee consisting partly of members of the council and partly of other persons representing the said part of the parish.

(3.) With respect to committees of parish and district councils the provisions in the First Schedule to this Act shall have effect.

(4.) This section shall not apply to the council of a borough.

Note. Committees. â Where a board constituted under Act of Parliament delegated certain of their powers to a committee, as they were authorised by the Act to do, it was held that the powers so conferred upon the committee must be exercised by them acting in concert; and that it was not competent to the committee to apportion amongst themselves the powers delegated to them. 1

It seems that the delegation of powers by an authority to a committee is not, in the absence of special provisions, equivalent to a resignation by the authority of the powers in question; but that the delegated powers may be resumed by the authority at any time. 2

Rights of part of parish. â Sect. 37 enables a county council to make an order rendering the consent of a parish meeting for part of a parish with a defined boundary necessary for any act or class of acts of the parish council affecting the property or rights of the part of the parish. As to the meaning of a "defined boundary," see the note to that section. The operation of sub-sect. (2) of the present section is extended by sect. 57 (5).

Sect. 57.â (1.) A parish or district council may concur J( j mt com with any other parish or district council or councils in mittces-appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district. (2.) Provided that a council shall not delegate to any (1) Cooky. ff77tt(i877),2CP. D. (2) Hutk v. Clarke (1890), 25 255; 46 L. J. C. P. 554; 36 L. T. Q. B. D. 391; 59 L. J. M. C. 120; 893; 25 W. R. 593 6 3 L- T. 34Â; 38 W. R. 655.

The Local Government Act, 1894.

Part 56 57 Vict, such committee any power to borrow money or make any c 73, s. 57- rate.

(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the councils who appointed it.

(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council.

(5.) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

Note. Joint committees. â As to the delegation of powers by a local authority to a committee, see the note to sect. 56. As to cases in which a parish council may



be required to appoint a committee consisting partly of members of the council and partly of other persons, see sub-sect. (2) of that section.

Audit of accounts of district and parish councils and inspection.

Sect. 58. (1.) The accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers, shall be made up yearly to the thirty-first day of March, or in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year, and in such form as the Local Government Board prescribe.

(2.) The said accounts shall, except in the case of accounts audited by the auditors of a borough, (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council,) be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly.

(3.) The Local Government Board may, with respect to any audit to which this section applies, make rules modifying the enactments as to publication of notice of 56 57 Vict. the audit and of the abstract of accounts and the report of c- 73 ' s- 58 the auditor.

(4.) Every parochial elector of a rural parish may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the parish council of the parish or parish meeting.

(5.) Every parochial elector of a parish in a rural district may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the district council of the district.

Note. Audit of Accounts. The principal enactments relating to the audit of the accounts of an urban sanitary authority are contained in the Public Health Act, 1875, 1 and are as follows:

Sect. 247. " Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed; (namely.)

"(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor.

"(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:

"(4.) A copy of the accounts duly made up and balanced, together with all rate books account books deeds contracts accounts vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be

open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or (1) 38 39 Vict. c. 55, ss. 247, 250.

56 57 Vict. allowing them to be altered when so made up, or c. 73, s. 58, n. refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds:

"(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books deeds contracts accounts vouchers receipts and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books deeds contracts accounts vouchers receipts documents or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books deeds contracts accounts vouchers receipts documents or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:

"(6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances: '(.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

"(8.) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of certiorari to remove the disallowance into the said Court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said Court shall have the same powers with respect to allowances disallowances and surcharges under this 56 57 Vict-Act as it has with respect to disallowances or allow- c- 73 s- 5 8 "-ances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances disallowances and surcharges by the said poor law auditors: "(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against

the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person: "(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district. " Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act."

Sect. 250. " The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers incidents and consequences as in the case of such last-mentioned accounts."

The omitted portions of sect. 247 prescribed the auditor by whom the accounts were to be audited, and provided for his remuneration. They were repealed by the District Auditors' Act, 1879, x by which these matters are now regulated.

That Act provides that the salaries or remuneration and expenses of district auditors shall be paid out of moneys provided by Parliament, and that for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on (1) 42 Vict. c. 6.

The Local Government Act, 1894. Part 56 57 Vict, every local authority whose accounts are audited by a district c. 73, s. 58, n. auditor a stamp duty according to a certain scale, and that such duty shall be levied by a stamp on the certificate which the auditor is required to give under sect. 3 of the Act. 1 The Act further provides for the appointment of district auditors and their assistants by the Local Government Board, enables that Board to assign the auditors their duties and the districts for which they are to act, 2 and contains the following provisions which it seems proper to quote at length: 3 â

Sect. 3. " Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of sect. 6 of the Poor Law Amendment Act, 1866,) a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement.



"He shall forthwith send the duplicate so stamped and certified by him to the Local Government Board; and in such case a return of the receipts or expenditure comprised in such statement need not, unless the Local Government Board so require, be sent to the Board in pursuance of the Local Taxation Returns Acts, 1860 and 1877."

Sect. 5. "Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of sect. 98 of the Poor Law Amendment Act, 1834."

Sect. 6. "The duties charged under this Act shall be (1) 42 Vict. c. 6, s. 2. sects. 2-4, the effect of which has (2) 1b. s. 4, and see s. 9. been stated, and sects. 9-12, which (3) The only portions of the Act repeal certain prior enactments and not set out are sect. 1, which merely contain temporary provisions, contains the short title of the Act;

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deemed to be stamp duties under the management of the 5 6 57 Vict-

Commissioners of Inland Revenue, and all the Acts relating to c 73 s ' 5 8 n stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, shall apply accordingly; and such duties may, if the Commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by this Act."

Sect. 7. "If a local authority fail to comply with the provisions of this Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer shall be liable to a fine not exceeding twenty pounds for each offence, to be recovered by action on behalf of Her Majesty in the High Court of Justice." Sect. 8. "In this Act,

The expression 'local rate' means the poor rate, the general district rate, and every rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of a poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined. The expression 'local authority' means any person or body of persons who receive and expend any local rate, but does not include overseers of the poor. The expression 'prescribed' means prescribed from time to time by the Local Government Board. The expression 'treasury' means the Commissioners of Her

Majesty's Treasury." The scale of stamp duties payable under the Act is as follows: 1  
 (1) 42 Vict. c. 6, 1st Schedule.

56 57 Vict. For the purpose of this scale the expenditure comprised in c 73. s- 5 8  
 "the financial statement is to be exclusive of any sum paid to another local authority  
 in pursuance of a precept. 1

Removal of auditor's allowance or disallowance by certiorari. The provisions  
 of the Acts relating to the relief of the poor with regard to the removal of an auditor's  
 allowance or disallowance by certiorari are as follows:

The Poor Law Amendment Act, 1844, 2 enacts that "it shall be lawful for every  
 person aggrieved by such allowance, and for every person aggrieved by such disal-  
 lowance or surcharge, if such last-mentioned person have first paid or delivered over  
 to any person authorised to receive the same all such money, goods, and chattels as  
 are admitted by his account to be due from him or remaining in his hands, to apply  
 to the Court of Queen's Bench for a writ of certiorari to remove into the said Court  
 the said allowance, disallowance, or surcharge, in the like manner and subject to the  
 like conditions as are provided in respect of persons suing forth writs of certiorari  
 for the removal of orders of justices of the peace, except that the condition of such  
 recognizance shall be, to prosecute such certiorari, at the costs and charges of such  
 person, without any wilful or affected delay, and if such allowance, disallowance, or  
 surcharge be confirmed, to pay to such auditor or his successor, within one month after  
 the same may be confirmed, his full costs and charges, to be taxed according to the  
 course of the said Court, and except that the notice of the intended application, which  
 shall contain a statement of the matter complained of, shall be given to such auditor  
 or his successor, who shall in return to such writ return a copy under his hand of the  
 entry or entries in such book of account to which such notice shall refer, and shall  
 appear before the said Court, and defend the allowance, disallowance, or surcharge  
 so impeached in the said Court, and shall be reimbursed all such costs and charges as  
 he may incur in such defence out of the poor rates of the union or parish respectively  
 interested in the decision of the question, unless the said Court make any order to the  
 contrary; and that on the removal of such allowance, disallowance, or surcharge the  
 said Court shall decide the particular matter of complaint set forth in such statement,  
 and no other; and if it appear to such Court that the decision of the said auditor was  
 erroneous, they shall, by rule of the Court, order such sum of money as may have been  
 improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto  
 by the party who ought to repay or discharge the same; and they may also, if they see  
 fit, by rule of the Court, order the costs of the person prosecuting such certiorari to be  
 paid by the parish or union to which such accounts relate, as to such Court may seem  
 fit; which rules of Court respectively shall be enforced in like manner as other rules  
 of the said Court are enforceable."

(1) 42 Vict. c. 6, 1st Schedule. (2) 7 8 Vict. c. 1, s. 35.

The Divided Parishes and Poor Law Amendment Act, 56 57 Vic. 1876, 1 enables  
 the Court, in the case of an appeal as to a c- "3 s- 5 8 n-joint account, to reverse  
 the auditor's decision with regard to one or more of the persons appealing without  
 discharging the other person or persons against whom the auditor's decision was  
 pronounced.

The issuing of a certiorari for the removal of justices' orders is now regulated by the Crown Office Rules. 2 These rules, among other things, provide that no writ of certiorari shall be granted, issued, or allowed to remove any order made by any justice or justices, unless such writ be applied for within six calendar months next after the order shall be made, and unless it be proved by affidavit that the party suing forth the same has given six days' notice thereof in writing to the justice or justices, or to two of them, by whom such order shall be made. 3

It has been decided that the High Court has jurisdiction to review the auditor's decision where it is erroneous in any sense, and not only where it is erroneous in point of law; 4 and on the other hand, that the Court will not reverse the decision of an auditor where there was evidence before him upon which he might have reasonably come to that decision. 5

Appeal to Local Government Board against auditor's decision.-â The right of appeal to the Local Government Board is given by the Poor Law Amendment Act, 1844, 6 which provides that "it shall be lawful for any person aggrieved. by any allowance, disallowance, or surcharge. to apply to the said commissioners now the Local Government Board to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein. as they may deem requisite for determining the question."

The Poor Law Audit Act, 1848, 7 provides that "where any appeal shall be made to the said commissioners now the Local Government Board against any allowance, disallowance, or surcharge made by any auditor. it shall be lawful for the said commissioners to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, (1) 39 40 Vict. c. 61, s. 38, set 291; see also Reg. v. Great Western outpost, p. 226. A'j. Co. (1849), 13 Q. B. 327; is (2) C. O. Rules 28, 32, 33, 35, L. J. M. C. 145; 13 Jur. 652; Reg. 36, 40. v. Street (1852), 18 Q. B. 682; 22 (3) C. O. Rule, 33. L. J. M. C. 29; 16 Jur. 1085.

(4) See Reg. v. Haslehurst (1887) (6) 7 8 Vict. c. 101, s. 36. 51 J. P. 645. (7) 11 12 Vict. c. 91, s. 4.

(5) Reg. v. Knott (1866), 15 L. T.

56 57 Vict, by an order under their seal, An order in writing duly signed c- 73 s- 5 8 n. an( j countersigned is now sufficient 2 direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge."

The Divided Parishes and Poor Law Amendment Act, 1876, 2 provides that "when an auditor shall have allowed, disallowed, or surcharged a sum in any account rendered to him jointly, and an appeal shall be made against the same, the decision of the auditor may be reversed by the Court or the Local Government Board, as the case may be, and the disallowance or surcharge may be remitted by the said Board in favour of one or more of the persons appealing only without discharging the other person or persons against whom such decision of the auditor was pronounced."



Recovery of sums certified by the auditor to be due. â By the Summary Jurisdiction Act, 1884, 3 it is enacted that "the payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment Act, 1844, 4 and the Acts amending the same, or with any other Act may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate."

The Poor Law Amendment Act, 1849' provides that the limitation of time for proceedings before justices imposed by sect. 11 of the Summary Jurisdiction Act, 1848, 6 shall not apply to any proceeding for the recovery of sums certified to be due, but that " no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the Court of Queen's Bench or to the Poor Law Board now the Local Government Board, after the lapse of nine calendar months from the determination thereupon."

There seems to be no limitation of time with regard to the recovery of a poor rate, unless perhaps under the Real Property Limitation Acts, and it is open to argument whether the limitation imposed on proceedings by an auditor under the Poor Law Amendment Act, 1849, applies where proceedings are taken under the Summary Jurisdiction Act, 1884. When the Act of 1849 was passed such sums were recoverable under the Poor Law Amendment Act, 1844, 7 in the same way that penalties are recoverable under the Poor Law Amendment Act, 1834s The two last mentioned enactments are, it should be mentioned, not repealed and might still apparently be acted upon.

(j) Poor Law Amendment Act, (5) 12 13 Vict. c. 103, s. 9.

1866 (29 30 Vict, c. 113), s. 5. (6) n 12 Vict. c. 43.

(2) 39 40 Vict. c. 61, s. 38. (7) 7 8 Vict. c. 101, s. 32.

(3) 47 48 Vict. c. 43, s. 11. (8) 4 5 Will. IV. c. 76, s. 99.

(4) 7 8 Vict. c. 101.

The justices to whom an application to enforce an auditor's 56 57 Vict. surcharge is made cannot go behind the auditor's decision. 1 c- 73 s- 5 8 n. The justices are not however bound to issue their warrant for the sum appearing in the certificate if it is shown, without questioning the auditor's decision, that the sum in question is not due, as for example where it has been paid. 2

A sum certified by the auditor to be due is in the nature of a debt, and the debt being provable in bankruptcy, is barred by an order of discharge. 3

As to the auditor's costs, reference may be made to the case cited below, 4 which was the sequel to the case of *Reg. v. Fordham* above mentioned.

Sect. 59.â (1.) Section one hundred and ninety-nine Supplemental and Schedule I. of the Public Health Act, 1875, so far as P" OT. isi Â ns as that schedule is unrepealed (which relate to the meetings courti" of urban authorities, and to the meetings and proceedings 3s soviet. of local boards), shall apply in the case of every urban c. 55. district council other than a borough council and of every rural district council and board of guardians, as if such district council or board were a local board, except that the chairman of the council or board may be elected from outside the councillors or guardians.

(2.) Any urban district council other than a borough council, and any rural district council and board of guardians may, if they think fit, appoint a vice-chairman to hold office during the term of office of the chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman.

(3.) Any rural district council shall be entitled to use for the purpose of their meetings and proceedings the board room and offices of any board of guardians for the union comprising their district at all reasonable hours, and if any question arises as to what hours are reasonable it may be determined by the Local Government Board.

(4.) Nothing in this section shall affect any powers of the Local Government Board with respect to the proceedings of guardians.

(5.) If any district council, other than a borough council, become unable to act, whether from failure to elect or otherwise, the county council of the county in (1) Reg. v. Unford (1857), 7 E. (3) Reg. v. Master (1869), L. R. B. 950; Reg. v. Finnis (1859), 4 Q. B. 285; 38 L. J. M. C. 73; 1 E. E. 935; 28 L. J. M. C. 17 W. R. 442; S. C. "noni. Reg. v. 201; 5 Jur. (n. s.) 791. Mart'in, 19 L. T. 733.

(2) Reg. v. Fordham (1873), L. R. (4) Prest v. Royston guardians) 8 Q. B. 501; 42 L. J. M. C. 153; (1875), 33 L. T. 564; 24 W. R. 22 W. R. 85. 174.

56 57 Vict. which the district is situate may order elections to be c ' 73 ' s 59- held and may appoint persons to form the district council until the newly elected members come into office.

(6.) Nothing in this Act shall affect any powers of the Secretary of State under the Public Health Supplemental 20 21 Vict. Act for Aldershot, 1857, or the position of persons c- 22 nominated under those powers.

Note. Chairman and vice-chairman of board of guardians. â As to appointments to these offices, see sect. 20 (7).

Miscellaneous.

Supplemental Sect. 60.â (1.) The council of each county may, from provisions time to time, by order, fix or alter the number of guardians guardians or rural district councillors to be elected for each parish within their county, and for those purposes may exercise powers of adding parishes to each other and dividing parishes into wards, similar to those which by the Acts relating to the relief of the poor are, for the purpose of the election of guardians, vested in the Local Government Board.

(2.) The council of each county may for the purpose of regulating the retirement of guardians or rural district councillors, in cases where they retire by thirds, and in order that as nearly as may be one third of the persons elected as guardians for the union, and one third of the persons elected as rural district councillors for the district, shall retire in each year, direct in which year or years of each triennial period the guardians or district councillors for each parish, ward, or other area in the union or rural district shall retire.

(3.) Where a poor law union is situate in more than one county, the power under this section of fixing or altering the number of guardians or rural district councillors, and of regulating the retirement of guardians and of district councillors, shall be exercised by a joint committee of the councils of the counties concerned, but if any of those councils do not, within two months after request from any other of them, appoint

members of such joint committee, the members of the committee actually appointed shall act as the joint committee.

Provided that if any order under this sub-section is, within six weeks after the making thereof, objected to by any of the county councils concerned, or by any committee of any of those councils authorised in that behalf, c " 73 ' s- 60-it shall be of no effect until confirmed by the Local Government Board.

(4.) Where under any local and personal Act guardians of a poor law union are elected for districts, whether called by that name or not, the provisions of this Act with respect to the election of guardians shall apply as if each of the districts were a parish.

(5.) The board of guardians of a union elected in pursuance of this Act shall, save as otherwise provided by an order of the Local Government Board, made on the application of those guardians, have the same powers and duties under any local and personal Act as the existing board of guardians.

(6.) Nothing in this Act shall alter the constitution of the corporation of the guardians of the poor within the city of Oxford, or the election or qualification of the members thereof, except those members who are elected by the ratepayers of parishes.

Note. Adding parishes to each other. â Sect. 6 of the Poor Law Amendment Act, 1868 1 enacts that the Poor Law Board now the Local Government Board " may, by order under seal, add any parish in a union, the population of which parish, according to the census last declared, shall not exceed three hundred, the annual rateable value whereof shall not exceed the average rateable value of the parishes in the same union according to the valuation lists in force for the time being, to some adjoining parish in the same union for the purpose of the election of guardians; and the persons qualified to elect such guardians in either parish shall be qualified to vote at such election for the parishes so united."

Division of parish into wards. â Sect. 12 of the Divided Parishes and Poor Law Amendment Act, 1876 2 enacts that " the Local Government Board may by their order divide any parish into wards for the election of guardians, and determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward shall for the purposes of such election be deemed to be a separate parish, except so far as the said Board may otherwise order."

Sect. 61.â No parish meeting or meeting of a parish Place of council, or of a district council, or of a board of guardians meeting shall be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room council or board of (1) 31 32 Vict. c. 122, s. 6. (2) 39 40 Vict. r. 61, s. 12. guardians.

The Local Government Act, 1894.

Part 56 57 Vict, c. 73, s. 61.

Permissive transfer to urban district council of powers of other authorities. is available for such meeting either free of charge or at a reasonable cost.

Sect. 62.â (1.) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that



date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.

(2.) After the appointed day any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

Note. Adoptive Acts in urban districts. With regard to these Acts generally, see the note to sect. 7.

The Lighting and Watching Act, 1833, as has been seen, has practically no application within an urban district. 2

The Public Libraries Act, 1892, 3 may be adopted for an urban sanitary district by the sanitary authority, but cannot be adopted for part of such a district. 4

The Baths and Washhouses Acts may be adopted for any urban district by the urban sanitary authority. 5 They cannot be adopted for part of a borough, nor, apparently, though the point is perhaps not free from doubt, for part of any other urban district. 6

The Public Improvement Act, 1860, 7 may be adopted for any borough and cannot be adopted for part of a borough. It cannot be adopted for an urban sanitary district other than a borough; but may be adopted for any parish with the requisite population within such a district.

The Burial Acts are not, as has been seen, 8 brought into operation within any area by a formal adoption of their provisions, but come into operation, so far as they relate to the provision of a burial-ground, upon the passing of a resolution that a burial-ground shall be provided for the area. And by sect. 7 (8) the passing of such a resolution is, for the purposes of the present Act, to be deemed an adoption of the Burial Acts. The provisions of the Acts mentioned in the note to sect. 7, ante, pp. 70-72, authorising the "adoption" of the Acts for various areas are not restricted to areas in rural (1) 34WIII. IV. c. 90.

(2) See ante, p. 64.

(3) 55 56 Vict. c. 53.

(5) See ante, p. 67.

(6) See Baths and Washhouses Act, 1846 (9 10 Vict. c. 74), s. 1; Local Government Board Act, 1871 (34 35 Vict. c. 70), s. 2; Public Health Act, 1875 (38 39 Vict. c. 55), s. 10; Baths and Wash-houses Act, 1878 (41 Vict. c. 14), s. 2.

(7) 23 24 Vict. c. 30.

(8) Ante, p. 70.

districts, but apply generally to any area such as is there 56 57 Vict, mentioned, whether wholly within a rural district, or wholly or c- 73, s- 62, n. partly within an urban district. The Acts, however, contain additional provisions as to the providing of burial-grounds for urban districts and for areas within urban districts which may be briefly mentioned.

Upon the petition of the town council of a borough, an order in council may in certain cases be made vesting the powers of a burial-board, with certain exceptions and modifications, in the town council. 1 A burial-ground provided by a town council, in pursuance of powers so vested in them, is to be deemed to be provided for such parish or parishes wholly or partly situate in the borough, as the town council may determine 2 but where, prior to the making of such an Order in Council, it appears that any parish wholly or in part within the borough is provided with a sufficient burial-ground, the

Order may direct that no part of such parish shall be assessed towards defraying the expenses of the town council under the Burial Acts, and in such case no burial-ground provided for the borough by the town council under the Acts is to be deemed to be provided for such parish. 3

Somewhat similar provisions are made under which, in certain cases, upon the petition of an urban sanitary authority, other than the corporation of a municipal borough, the authority may by Order in Council be made a burial-board for their district. 4

An enactment in the Local Government Act, 1858, 5 re-enacted by the Public Health Act, 1875, 6 provides that " when a vestry of any parish comprised in a local government district resolves to appoint a burial-board, the local board may at the option of the vestry be the burial-board for such parish, and all expenses incurred by such burial-board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate. Provided that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial-board for the parish, and shall be deemed to be a burial-board elected under the Burial Acts for the time being in force."

A section of the Sanitary Act, 1866, 7 also re-enacted by the Public Health Act, 1875, 8 provides that " when the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate property rights powers duties and liabilities, and from and after such transfer, the urban authority shall have all such (1) 17 is Vict. c. 87, ss. 1, 2. (38 39 Vict. c. 55), s. 310.

(2) lb. s. 7. (5) 21 22 Vict. c. 98, s. 49.

(3) lb. s. 9. (6) 38 39 Vict. c. 55, s. 343.

(4) 20 21 Vict. c. 81, s. 4, and (7) 29 30 Vict. c. 90, s. 44. see the Public Health Act, 1875 (8) 38 39 Vict. c. 55, s. 343.

Ti â Local Government Act, 1894.

Part 56 57 Vict, estate property rights powers duties and liabilities as if they c. 73, s. 62, n. ac j b een (July appointed a burial board under the Burial Acts for the time being in force."

The Burial Act, 1855, makes certain provisions as to local boards acting as burial boards under local Acts. 1

The powers of town councils, 2 or of other urban sanitary authorities acting as burial boards, 3 differ in certain respects from those of a burial board appointed by a vestry or a similar meeting; and certain special provisions with regard to fees payable to incumbents, clerks, sextons, and other persons apply where a town council act as burial board. 4

Sanitary authorities, both urban and rural, besides being empowered to act as burial boards under the Burial Acts have, it may be mentioned, other powers for the provision of cemeteries under the Public Health (Interments) Act, 1879, 5 commonly called Marten's Act.

council acquiring powers of district council.

Provisions as Sect. 63.â (1.) Where the powers of a district council to county are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect:â (Â.) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board: (b.) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses: (c.) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers: (d.) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district (1) 18 19 Vict. c. 128, ss. 19, (2) See 17 is Vict. c. 87, ss. 2-6, 8, 11, 12; 20 21 Vict. c. 81, s. 22.

(3) See 23 24 Vict. c. 64, ss.

1-3; 24 25 Vict. c. 61, s. 21, re-enacted by the 38 39 Vict, c. 55, s. 343; 25 26 Vict. c. ico.

(4) 17 cs: is Vict. c. 87, s. 10.

(5) 42 43 Vict. c. 31.

council in like manner, and the charge shall 5 6 57 Vict, have the like effect, as if the loan were lawfully c- 7 3 â 6 3-raised and charged on that fund or rate by the district council: (e.) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers: (.) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers. (2.) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed the members who are actually appointed shall act as the joint committee.

Sect. 64.â A county council may employ a district Power to council as their agents in the transaction of any adminis- act through trative business on matters arising in, or affecting the council interests of, its own district.

Sect. 65.â Where any improvement commission Saving for affected by this Act have any powers, duties, property, f debts, or liabilities in respect of any harbour, the pow improvement commission shall continue to exist and be elected for the purpose thereof, and shall continue as a separate body, as if this Act had not passed, and the property, debts, and liabilities shall be apportioned between the district council for the district and the commission so continuing, and the adjustment arising out of the apportionment shall be determined in manner provided by this Act.



Note. Adjustment of property debts and liabilities. â The provisions of the Act with regard to such adjustments are contained in sect. 68.

The Local Government Act, 1894.

Part 56 57 Vict. Sect. 66.â Nothing in this Act shall affect the c- 73 s- â trusteeship, management, or control of any elementary Saving for sc h 00. elementary schools.

Note. Elementary school. â The expression " elementary- school " is defined in sect. 75 (2).

Transfer of property and debts and liabilities.

Adjustment of property and liabilities.

Sect. 67.â Where any powers and duties are transferred by this Act from one authority to another authorityâ (1.) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and (2.) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and (3.) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed. Sect. 68.â (1.) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties to the agreement.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board: Provided that where any of the authorities interested is a board of ians, any such agreement, so far as it relates to the 5 6 57 Vict use of any property, shall be subject to the approval c- 73 ' s- 68g guardians, joint use of the Local Government Board.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration 52 5:3 Vict. Act, 1889, and the arbitrator shall have power to disallow c- 49-as costs in the arbitration the costs of any witness whom lie considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or

out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Sect. 69.â Where an alteration of any area is made Power to by this Act, an order for any of the matters mentioned deal Wtll1 in section fifty-nine of the Local Government Act, 1888, â?"T.â t nf. J.-11-111 arising out 01 may, 11 it appears to the county council desirable, be alteration of made by the county council, or, in the case of an area boundaries, situate in more than one county, by a joint committee of county councils, but nothing in this section shall empower a county council or joint committee to alter the boundaries of a county.

Note. Alterations of area. â With regard to alterations of area effected by the Act, see sects. 1 (3), 24 (5) and 36 (2), and the note to the last mentioned section. Sect. 59 of the Local Government Act, 1888, 1 will be found in the Appendix.

Sect. 70.â (1.) If any question arises, or is about to Summary arise, as to whether any power, duty, or liability is or is proceeding (1) 51 52 Vict. c. 41, s. 59.

56 57 Vict, not transferred by or under this Act to any parish council, c 73, s. 70. pgijgh me eting, or district council, or any property is or for deter- j s not ve sted in the parish council, or in the chairman "tosSS as anc overseers of a rural parish, or in a district council, totranser of that question, without prejudice to any other niode of powers. trying it, may, on the application of the council, meet- ing, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the Court; and the Court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

(2.) If any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or, as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891.

(3.) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

Note. Application to High Court. â Sect. 29 of the Local Government Act, 1888, 1 contains provisions very similar to those in sub-sect. (1) of the present section. Rules

of Court have been made regulating the practice under that section; 2 and similar rules as to the practice under the present section will doubtless be made. Before the rules in question came into force, the proper course was to make the application for an order to set down for hearing a case stated under the section to the Court and not at chambers.

3

Under the last-mentioned section the Court will not answer abstract questions as to the construction of statutes; specific facts that have actually arisen must be put before it; 4 and the (1) 51 52 Vict. c. 41, s. 29. quarter sessions), *ex arte* (1889), (2) W. N., August 20th, 1892; W. N. 1889, p. 183.

Annual Practice, 1894, Vol. ii., (4) *Re Cardigan county council* p. 369. (1890), 54 J- P- 79 2- (3) *Staffordshire chairman of*

Court will not decide whether any matter is proper for adjust- 56 57 Vict, ment under sect. 62 of the Act, 1 which is similar in scope to c- 73 s- 7Â "â sect. 68 of the present Act." 2

No appeal, it may be mentioned, lies to the Court of Appeal on a case stated under the Local Government Act, 1888. 3

Appeal from Charity Commissioners, â Under sect. 8 of the Charitable Trusts Act, 1860, 4 as amended by sect. 10 of the Charitable Trusts Act, 1860, 5 an appeal against orders of the Charity Commissioners can only be presented, except in the case of an order removing an officer of a chanty where such officer also has a right of appeal, by the Attorney-General, or by some person authorised by him or by the Charity Commissioners." The appeal must be brought within three months after the definitive publication of the order of the Charity Commissioners, and must not be brought, except by the Attorney-General, before the expiration of twenty-one days after written notice under the hand of the appellant of the intention to appeal has been delivered to the Charity Commissioners at their office, and has been served on the Attorney-General by delivering the same to the solicitor who acts for him in *ex officio* proceedings relating to charities. 7 Security for costs may be required from any appellant other than the Attorney-General, s and the Attorney-General, or any person authorised by him or by the Charity Commissioners, may appear as respondent upon the appeal. 9

Sect. 71.â A copy of every order made by a county Supplemental council or joint committee in pursuance of this Act shall provisions as be sent to the Local Government Board, and, if it alters t0 cou.? ty any local area or name, also to the Board of Agriculture, orders.

Sect. 72.â (1.) The expenses incurred by the Local Provisions Government Board in respect of inquiries or other pro as to local ceedings under this Act shall be paid by such authorities m( l uines-and persons and out of such funds and rates as the Board may by order direct, and the Board may certify the amount of the expenses so incurred, and any sum so certified and directed by the Board to be paid by any authority or person shall be a debt from that authority or person to the Crown.

(2.) Such expenses may include the salary of any (1) 51 52 Vict. c. 41, s. 62. (6) See *Re Hackney Charities*, (2) *Re Salop county council*) *Ex parte Nicholls* (1865), 4 De G. (1891), 65 L. T. 416; '56 J. P. J. S. 588; 34 L. J. Ch. 169; 213. 11 Jur. (N. s.) 126; 11 L. T. 758; (3) *Re Kent county council*) 13 W. R. 398.



1891), L. R. 1891 1 Q. B. 725; (7) 23 24 Vict. c. 136, s. 8; 60 L. J. Q. B. 435; 65 L. T. 213; 32 33 Vict. c. no. 11.

39 W. R. 465; 55 J. P. 647. (8) 23 24 Vict. c. 136, s. 8.

(4) 23 24 Vict. c. 136, s. 8. (9) *ib.* s. 9.

56 57 Vict. inspector or officer of the Board engaged in the inquiry c. ' 73 ' ' 2 ' or proceeding, not exceeding three guineas a day.

(3.) The Local Government Board and their inspectors shall have for the purposes of an inquiry in pursuance of this Act the same powers as they respectively have for the purpose of an inquiry under the Public Health Act, 1875.

(4.) Where a county council hold a local inquiry under this Act or under the Local Government Act, 1888, on the application of the council of a parish or district, or of any inhabitants of a parish or district, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorised by the county council) shall be paid by the council of that parish or district, or, in the case of a parish which has not a parish council, by the parish meeting; but, save as aforesaid, the expenses of the county council incurred in the case of inquiries under this Act shall be paid out of the county fund.

Note. Local Government Board inspectors. â With regard to the powers of such inspectors under the Public Health Act, 1875, 1 see the note to sect. 9, ante, pp. 96, 97.

Provision as Sect. 73.â When the day on which any thing is to be done is a Sunday, Christmas Day, or Good Friday, or a bank holiday, that thing shall be done on the next following day, not being one of the days above mentioned.

Note. Computation of time. â By the Statutes (Definition of Time) Act, 1880, 2 it is provided that "whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred shall, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time."

By the Interpretation Act, 1889, 3 it is provided that in every Act passed after 1850, unless the contrary intention appears, the expression " month " shall mean calendar month. In earlier Acts the expression, unless the contrary intention appears, means a lunar month of twenty-eight days. 4

Where an act is required by statute to be done at, or within or not within, a prescribed interval of time after or before a given date or event, it becomes a question how time is to be (1) 38 39 Vict. c. 55. called "Lord Brougham's Act,"

(2) 43 44 Vict. c. 9. now repealed.

(3) 52 53 Vict. c. 63, s. 3, re (4) *Bla. Com.* vol. ii. p. 141; enacting a provision in sect. 4 of *Lacon v. Hooper* (1795), 6 T. R. the 13 14 Vict. c. 21, commonly 224.

computed so as to ascertain the proper date, or the earliest or 56 57 Vict. latest date, as the case may be, for doing the act. 1 c- 73. s. 73. "-

The following rules for the solution of such questions, in the absence of special provisions on the subject, appear to be established.

So far as possible fractions of a day are disregarded, and each day is looked upon as a point of time; 2 so that in general it comes to the same thing whether time is to be computed from a specified date or from an event that occurs on that date. Thus an

act to be done within three days of a Wednesday, or of an event occurring at noon on a Wednesday, may be done at any time on the succeeding Saturday. 3

The word "clear" in such expressions as so many "clear days" or "a clear month" imports that the date from which the period is reckoned is to be excluded from the computation, and, where the period is reckoned from one date to another, that the latter date also is to be excluded. Thus, where an act is to be done within ten clear days of, say, of April 10th, it may be done on April 20th, but not later, and an act to be done within a clear month (where that expression means calendar month) of the former date may be done on May 10th at latest. 4

Again, ten clear days' notice of an event occurring on May 20th cannot be given later than May 9th, nor a clear calendar month's notice of the same event later than April 19th. 5 Whether the notices could be given earlier than those dates would depend upon whether the enactment requiring the notice was intended to prescribe the exact length or merely the minimum length of notice.

The expressions "at least," 6 or, apparently, "not less" (1) Provisions with regard to the Ves. 248, at p. 257; Reg. v. Middle-computation of time for the *pur sex* justices) (1845), 3 D. L. poses of the Municipal Corporations 109; 2 New Sess. Cas. 73; 14 Act, 1882 (45 46 Vict. c 50), are L. J. M. C. 139; 9 Jur. 758. contained in sect. 230 of that Act, (3) For authorities showing that *â post*. That section is incorporated in such a case Saturday and not with the Local Government Act, Friday would be the last day for the 1888 (51 52 Vict. c. 41), by act, see W, p. 240 notes (2) and (3). sect. 75 of that Act, in the manner (4) See *Liffen v. Pitcher* (1842), in that section appearing; and *i* D. N. S. 767, per Coleridge, J., might be argued that, by virtue of at p. 769; *Boyd v. Nethery* (1860), sect. 75 (1) of the present Act, 10 Ir. C. L. R. 369.

sect. 230 of the Act of 1882 is (5) *Rex v. Herefordshire justices*) accordingly indirectly incorporated (1820), 3 B. Aid. 581; and see with the present Act. The provi the cases cited in note (4) *supra*, sions of the present section, how and note (6) *infra*.

ever, which are in effect identical (6) *Zouch v. Empsey* (1821), 4 with part of the last-mentioned B. Aid. 522; Reg. v. *Shropshire section*, appear to show on the justices) (1838), 8 A. E. 173; 3 principle *expressio uuius, exclusio N. P. 286*; 7 L. J. M. C. 56; 2 *alterius*, that the section is not in Jur. 807; *Young v. Higgon* (1840), tended to apply to the interpreta 6 M. V. 49; 8 D. P. C. 212; tion of the present Act. 9 L. J. M. C. 29; 4 Jur. 125; (2) *Lester v. Garland* (1808), 15 *Mitchell v. foster* (1841), 9 D. P. C.

56 57 Vict. than," 1 have a significance similar to that of the word c- 73 s- 73) n- "clear." Thus, the expressions "ten days at least," or, apparently, "not less than ten days," mean ten clear days or more.

Where a period of time is described without the use of the word clear or some similar expression, there is more difficulty.

If an act is required to be done within a certain period from an ascertained date, that date is excluded from the computation. So that an act to be done within ten days after an event occurring, say, on May 10th may be done on May 20th at latest, and an act to be done "within a calendar month" after the former date on June 10th at latest. 2 Similarly, where an act is not to be done until the expiration of a month from, say, Jan. 12th, it cannot be done earlier than Feb. 13th. 3 Where, therefore, an act is to

be done within a given time from an ascertained date, the latest or earliest day, as the case may be, on which it may be done is, in the absence of provisions to the contrary, the same, whether the word clear is used in describing the interval or not. Thus, "within ten days" and "within ten clear days" have in general the same meaning.

Where an act is required to be done at a given interval of time from an ascertained date, so that the time is reckoned from one date and to another, the rule is said to be, in the absence of the word clear or some equivalent expression, to exclude the one date and to include the other. 4

This rule is well established as regards enactments requiring simply so many days' notice of an event to be given. Thus, ten days' notice of an event occurring on the 20th may be given on the 10th, but not later. 5 Whether it could be given earlier depends upon whether it was intended to prescribe the exact length of notice or merely the minimum length. A ten days' notice is, therefore, one day shorter than a ten clear days' notice.

527; 12 A. k E. 472; 9 L. T. M. C. v. Bartholomew (1891), L. R. 1892 â 95 5 5 J ur- 7Â; Re S- v- Middlesex I Q. B. 161; 61 L. J. M. C. 63; justices) (1845), 2 New Sess. Cas. 65 L. T. 677; 40 W. R. 63; 56 73; 3 D. L. 109; 14 L. J. M. C. J. P. 262; Cf. Ex parte Foster, Re 39; 9 Jur. 758; Reg. v. Aberdare Hanson (1887), 56 L. T. 573;

Canal Co. (1850), 14 Q. B. 854; 19 S. C. north, Ex parte Forster, 35

L. J. Q. B. 251; 14 Jur. 735; Free W. R. 456; 4 M. B. R. 9S.

man v. Read (1863), 4 B. S. 174; (3) Blunt v. Heslop (1838), S 32 L. T. M. C. 226; 10 Jur. (n. s.) A. E. 577; 3 N. P. 553; 7 149; 8 L. T. 458; n W. R. 802. L. J. Q. B. 216; S. C. nom. Blunt (1) Chambers v. Smith (1843), 12 v- Bfisolp, 2 Jur. 542.

M. W. 2; 13 L. J. Ex. 25; 7 (4) Burn's" Justice of the Peace,"

Jur. 1019; Reg. v. Lauder (1867), 30th ed., vol. v., p. 969.

Ir. R. I C. L. 225; Re Railway (5) Rex v. Yorkshire justices)

Sleepers Supply Co. (1885), 29 Ch. D. (1833), 4 B. Ad. 685; 2 L. J.

204; 54 L. J. Ch. 720; 52 L. T. M. C. 93; Rex v. Goodenough 731; 33 W. R. 595. (1835), 2 A. E. 463; S". C. nom.

(2) Robinson v. Waddington Rex v. Cumberland justices), I H. (1849), 13 Q- B. 753; 18 L. J. W. 16; 4 N. M. 378; 4 L. J. Q. B. 250; 13 Jur. 537; Radcliffe M. C. 72.

Whether the rule can be regarded as established for all pur- 56 57 Vict, poses, however, seems doubtful. 1 c- 73. s- 73 n-

Time is reckoned inclusive of Sundays; and this is so even though a Sunday forms the last day of a period within which an act is to be done. 2 Thus, where an act was required to be done within two days of a Friday, it was held to be too late to do it on the succeeding Monday. 3 The rule is, however, no doubt subject to exception where the time for doing an act is limited to only one day.

Sect. 74.â This Act shall be deemed to be an Act Provisions as touching local government within the meaning of section 5Â forty-nine of the Local Government Act, 1888, and a 51 52 yjct. provisional order for the Scilly Islands may, on the c. 41. application of the council of the Isles of Scilly, and after such public notice as appears to the Local Government Board sufficient for giving information to all persons interested, be made accordingly.



Note. Scilly Islands. By sect. 49 of the Local Government Act, 1888, 4 the Local Government Board were empowered to make a provisional order for regulating the application of that Act to the Scilly Islands, and for providing for the exercise and performance in those islands of the powers and duties both of county councils and also of authorities under the Acts relating to highways and the Public Health Act, 1875, and the Acts amending the same, and for the application to the islands of any provisions of any Act touching local government.

Under that section a provisional order has been made and confirmed by Parliament, 5 establishing the Council of the Isles of Scilly, conferring on that council many of the functions of a county council, a sanitary authority, and a highway authority, and otherwise providing for local government in the islands.

Sect. 75. (1.) The definition of "parish" in section Construction one hundred of the Local Government Act, 1888, shall of Act. not apply to this Act, but, save as aforesaid, expressions "4 L u 1 C" used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

(2.) In this Act, unless the context otherwise requires—

Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression "parochial elector," when used with (1) See *Young v. Higgon*, ante, L. J. C. P. 224; 6 W. R. 517.

p. 239." (3) *Ex parte Simpkin* (1859), 2 (2) Reg. v. Middlesex (justices) E. E. 392; 29 L. J. M. C. 23; (1843), 2 D. N. S. 719; 12 L. J. 6 Jur. (n. s.) 144.

M. C. 59; 7 Jur. 396; *Peacock v.* (4) 51 52 Vict. c. 41, s. 49.

Reg. (1858), 4 C. B. (N. s.) 264; 27 (5) 53 54 Vict. c. clxxvi.

56 57 Vict. reference to a parish in an urban district, or in c 73. s. 75. the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

The expression "election" includes both the nomination and the poll.

The expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

The expression "ecclesiastical charity" includes a charity, the endowment whereof is held for some one or more of the following purposes:—(a) for any spiritual purpose which is a legal purpose; or (b) for the benefit of any spiritual person or ecclesiastical officer as such; or (c) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination; or (d) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or (e) otherwise for the benefit of any particular church or denomination, or of any members thereof as such. Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination. The expression " affairs of the church " shall include the distribution of offertories or other collections made in any church. The expression " parochial charity " means a charity the benefits of which are or the separate distribution of the benefits of which is confined 56 57 Vict, to inhabitants of a single parish, or of a single c- 73 ' s- 75 ' ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

The expression " vestry " in relation to a parish means the inhabitants of the parish whether in vestry assembled or not, and includes any select vestry either by statute or at common law.

The expression " rateable value " means the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate.

The expression " county " includes a county borough, and the expression " county council " includes the council of a county borough.

The expression " elementary school " means an elementary school within the meaning of the Elementary Education Act, 1870. c- 75-

The expression " local and personal Act " includes a Provisional Order confirmed by an Act and the Act confirming the Order.

The expression " prescribed " means prescribed by order of the Local Government Board.

Note. " Parish." The definition in the Interpretation Act, 1889, governing the meaning of the word " parish " for the purposes of the present Act will be found, ante, p. 177.

Vestry. â The provision in sect. 7 (3) that, for the purposes of that sub-section, the expression vestry " shall include any meeting of ratepayers or voters " shows that a meeting of any particular class of inhabitants of a parish held under the provisions of a statute, and not being a vestry meeting in the ordinary sense, is not a " vestry " within the meaning of that expression as defined in the present section.

Elementary school. â The Elementary Education Act, 1870,-provides that " the term ' elementary school ' means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of instruction, from each scholar, exceed ninepence a week."

By the Education Code (1890) Act, 1890, 3 it is provided that " it shall not be required as a condition of a parliamentary grant to an evening school that elementary education shall be the principal part of the education then given, and so much of the definition of the term " elementary school " in sect. 3 of (1) 52 53 Vict. c. 63, s. 5. (3) 53 54 Vict. c. 22, s. 1.

(2) 33 34 Vict. c. 75, s. 3.

The Local Government Act, 1894.

Part 56 57 Vict, c 73. s- 75, n

"County."

"Entire county."

"Division of a county."

"Administrative county."

"Metropolis."

"Borough."

Parish."

"Parliamentary county,"

the Elementary Education Act, 1870, as requires that elementary education shall be the principal part of the education given in an elementary school shall not apply to evening schools." Whether this enactment should be considered as modifying the definition of elementary school for the purposes of the present Act is not clear.

Local and personal Act. â This expression has been held to include an enactment of a local and personal character contained in a public general Act. 1

Definitions contained in the Local Government Act, 1888.â The interpretation clause of this Act, 2 with the omission of a few paragraphs which it seems unnecessary to quote for that purposes of the present work, is as follows: 3 â

"In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say:

"The expression ' county' does not include a county of a city or county of a town: " The expression ' entire county' means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties: " The expression ' division of a county," in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division: " The expression ' administrative county," means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough: " The expression ' metropolis' means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts: " The expression ' borough' means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of the borough shall include a reference to the mayor, aldermen, and citizens of a city:

"The expression ' parish' means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part:

"The expressions ' parliamentary county," and ' parliamentary election," and ' parliamentary voters," have the (1) Reg. v. London County Council (1893), L. R. 1893 2 Q. B. 454 J 63 L. J. Q. B. 4; 69 L. T. 580; 42 W. R. 1.

(2) 51 52 Vict. c. 41, s. 100.

(3) Marginal notes have been inserted for convenience of reference; they are not identical with those in the Queen's printers' copies of the Act.

same meaning as in the Registration Act, 1885, and the 56 57 Vict.

Acts therein referred to: c- 73Â s- 75. n-

"The expression 'existing' means existing at the time "Existing," specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day:



"The expression 'guardians' means guardians elected under "Guardian-" the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other bodies of persons performing under any local Act the like functions to guardians under the Poor Law Amendment Act, 1834: 'â' The expression 'poor law union' means any parish or "Poor law union of parishes for which there is a separate board of union-guardians:

"The expressions 'district council' and 'county district'" District mean respectively any district council established for council," purposes of local government under an Act of any tr: g?"i? t5 future session of Parliament, and the district under the management of such council, and until such council is established, mean respectivelyâ

"(a.) as regards the provisions of this Act relating to highways and main roads, a highway authority and highway area; and " (J?.) save as aforesaid, an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and the district of such authority:

"The expression 'highway area,' means, as the case may " Highway require, an urban sanitary district, a highway district, area or a highway parish not included within any highway or urban sanitary district:

"The expression 'highway authority' means, as respects an "Highway urban sanitary district, the urban sanitary authority, and authority." as respects a highway district, the highway board, or authority having the powers of a highway board, and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties:

"The expression 'urban authority' means, until the estab- " Urban lishment of district councils as aforesaid, an urban authority, sanitary authority; and, after their establishment, the district council of an urban county district:

"The expression 'rural authority' means, until the estab- " Rural lishment of district councils as aforesaid, a rural authority." sanitary authority; and, after their establishment, the district council of a rural county district:

"The expression 'person' includes any body of persons, "Person," whether incorporate or unincorporate:

The Local Government Act, 1894.

Part 56 57 Vict, c 73. s. 75, n-" Property."

"Powers." " Duties." "Liabilities."

"Powers, duties, and liabilities."

"Expenses." " Costs."

The expression 'property' includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority; and the expression 'property' shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the

quarter sessions: ' The expression ' powers' includes rights, jurisdiction, capacities, privileges, and immunities: ' The expression ' duties ' includes responsibilities and obligations: ' The expression ' liabilities ' includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose: f The expression ' powers, duties, and liabilities," includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act:: ' The expression ' expenses ' includes costs and charges;; ' The expression ' costs ' includes charges and expenses:

Pension.

Office.

"Divisions of Lincolnshire."

The expression ' pension' includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer: ; The expression ' office' includes any place, situation, or employment, and the expression ' officer ' shall be construed accordingly: ; The expression ' the divisions of Lincolnshire ' means the parts of Holland, the parts of Kesteven, and the parts of Lindsey:

Main road." "The expression ' main road' when used in relation to the district of any highway or road authority, means so much of the main road as is situate within the district of such authority."

The portions of the clause x not set out above define the 56 57 Vict. expressions " quarter sessions borough," " quarter sessions," c- 73 s- 75. n-"Secretary of State," "Treasury," "Bank of England," "assizes," "County and Borough Police Act, 1856," and " County and Borough Police Acts," provide for the meaning of expressions referring to the value of an area as ascertained by the standard or basis for the county rate or contributions, and of the expression " day of nomination " in relation to the election of county councillors; and contain provisions as to the costs of assizes and of quarter and petty sessions.

The Interpretation Act, 1889.â Reference is made elsewhere in the present work to the provisions of this Act, 2 defining the expressions "parish," 3 "parliamentary register of elections," 4 "local government register of elections," 4 and " Lands' Clauses Acts "; 5 and dealing with the effect of the repeal of an enactment. 6

Among the remaining provisions of the Act the following appear to call for quotation in the present work: 7 â

Sect. 1.â " (r.) In this Act and in every Act passed after Gender and the year one thousand eight hundred and fifty, whether before number. or after the commencement of this Act, unless the contrary intention appears,â

"(a.) words importing the masculine gender shall include females; and

"(b.) words in the singular shall include the plural, and words in the plural shall include the singular.

"(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the

enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty."

Sect. 2. (1.) In the construction of every enactment Application relating to an offence punishable on indictment or on sum- of penal Acts mary conviction, whether contained in an Act passed before or t0 bodies after the commencement of this Act, the expression ' person ' 1 shall, unless the contrary intention appears, include a body corporate.

"(2.) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved."

Sect. 3. " In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the following expressions shall, unless the (1) 51 52 Vict. c. 41, s. 100. post.

(2) 52 53 Vict. c. 63. (7) Marginal notes have been in- (3) See ante, p. 177. serted for convenience of reference; (4) See ante, p. 3. they are not identical with those in (5) See ante, p. 91, n. the Queen's printers' copies of the (6) See the note to sect. 89, Act.

The Local Government Act, 1894.

Part 56 57 Vict, c 73, s- 75, " "Month." " Land."

"Oath." "Affidavit."

Judicial definitions in past and future Acts.

"Summary Jurisdiction Acts."

"Court of summary jurisdiction."

"Municipal borough."

"Parliamentary borough."

contrary intention appears, have the meanings hereby re-pectively assigned to them; namely,â

"The expression ' month' shall mean calendar month:

"The expression ' land' shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure:

"The expressions ' oath' and ' affidavit' shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression ' swear' shall, in the like case, include affirm and declare."

Sect. 13. " In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:â

"(7.) The expression ' the Summary Jurisdiction (England) Acts' and the expression ' the Summary Jurisdiction (English) Acts' shall respectively mean the Summary Jurisdiction Act, 1848 1, and the Summary Jurisdiction Act, 1879, 2 and any Act, past or future, amending those Acts or either of them.

"(10.) The expression 'the Summary Jurisdiction Acts' when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts.

"(11.) The expression ' court of summary jurisdiction' shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom



jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law."

Sect. 15. "In this Act and in every Act passed after the commencement of this Act the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:â

"(1.) The expression ' municipal borough ' shall mean, as respects England and Wales, any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city, and any reference to the powers, duties, liabilities or property of the council of a borough shall be construed as a reference to the powers, duties, liabilities, or property of the mayor, aldermen and burgesses of the borough acting by the council.

"(3.) The expression ' parliamentary borough ' shall mean any borough, burgh, place or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a university, or a combination of universities.

(Jt) 11 12 Vict. c. 43.

(2) 42 43 Vict. c. 49.

"(4.) The expression ' borough ' when used in relation to S c 57 v 'ct. local government shall mean a municipal borough as above c 73Â s- 75 n-defined, and when used in relation to parliamentary elections " Borough." or the registration of parliamentary electors shall mean a parliamentary borough as above defined.

Sect. 19. "In this Act and in every Act passed after the "Person." commencement of this Act the expression â person ' shall, unless the contrary intention appears, include any body of persons corporate or unincorporated"

Sect. 20. "In this Act and in every other Act whether "Writing." passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form."

Sect. 26. "Where an Act passed after the commencement Service by of this Act authorises or requires any document to be served post ' by post, whether the expression ' serve," or the expression ' give ' or 'send or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Sect. 31. "Where any Act, whether passed before or after Construction the commencement of this Act, confers power to make, grant, J! 1? 1 or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power."

Sect. 32.â (1.) "Where an Act passed after the commence- Construction ment of this Act confers a power or imposes a duty, then, Â Â f ercise unless the contrary intention appears, the power may be exer- of powers cised and the duty shall be performed from time to time as and duties, occasion requires.

"(2.) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

"(3-) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like inanner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws."

Sect. 33. " Where an act or omission constitutes an offence Provisions as under two or more Acts, or both under an Act and at common to offences

The Local Government Act, 1894.

Part 56 57 Vict c 73, s. 75, n under two or more laws.

Measurement of distances.

"Commencement."

Exercise of statutory powers between passing and commencement of Act.

Extent of Act.

Short title.

law, whether any such Act was passed before or after the commencement of this Act, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence."

Sect. 34. " In the measurement of any distance for the purposes of any Act passed after the commencement of this Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane."

Sect. 36.â " (1.) In this Act, and in every Act passed either before or after the commencement of this Act, the expression ' commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

"(2.) Where an Act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day."

Sect. 37. "Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject

to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation."

Sect. 76.â This Act shall not extend to Scotland or Ireland.

Sect. 77. â This Act may be cited as the Local Government Act, 1894.

56 57 Vict. c 73, s. 78-

PAET V.

Transitory Provisions.

Sect. 78. â (1.) The overseers of each rural parish shall First elec-convene the first parish meeting of the parish at the time tlo Â s t0 fixed by or under this Act lor the first election of parish j Jll councillors, whether there is or is not a parish council lor the parish, and for this purpose the overseers of a parish shall be deemed to be the overseers of every part of the parish.

(2.) The chairman of the parish meeting at which the first parish councillors are nominated, or in his default the clerk of the guardians, shall convene the first meeting of the parish council.

(3.) The first parish councillors and the first chairman of a parish meeting elected under this Act shall retire on the second ordinary day of coming into office of councillors which happens after their election.

Note. First parish meeting. â The date of the first parish meeting will be the 8th November, 1894, or such later date in 1894, as the Local Government Board may fix: see sect. 84 (1). The provision in sub-sect. (1) that, for the purpose of convening the first parish meeting, the overseers of a parish shall be deemed to be the overseers of every part of the parish, will meet cases where a parish is subdivided by the Act.

Sect. 79.â (1.) The existing boards of guardians and First elec-urban and rural sanitary authorities shall take the tloris? f necessary measures for the conduct of the first elections Â n( j district of guardians and district councillors respectively under councils. this Act, including any appointment of returning officers required by rules under this Act.

(2.) Where a parish is divided by this Act into two or more new parishes, then, subject to any order made by the county council, there shall be one guardian, and if it is in a rural district, one district councillor for each of such new parishes.

(3.) Of the guardians and urban and rural district councillors first elected under this Act, save as hereinafter 56 57 Vict, mentioned, one third as nearly as may be shall continue c " 73 ' s " 79 ' in office until the fifteenth day of April one thousand eight hundred and ninety-six, and shall then retire; and one third as nearly as may be shall continue in office until the fifteenth day of April one thousand eight hundred and ninety-seven, and shall then retire; and the remainder shall continue in office until the fifteenth day of April one thousand eight hundred and ninety-eight, and shall then retire.

(4.) The guardians and rural district councillors to retire respectively on the fifteenth day of April one thousand eight hundred and ninety-six, and on the fifteenth day of April one thousand eight hundred and ninety-seven shall be the guardians and rural district councillors for such parishes, wards, or other areas, as may be determined by the county council for the purpose of the rotation.



(5.) Where guardians or rural district councillors retire together at the end of the triennial period, the guardians and district councillors first elected under this Act shall retire on the fifteenth day of April one thousand eight hundred and ninety-eight.

16.) Of the first urban district councillors elected under this Act, the third who are respectively to retire on the fifteenth day of April one thousand eight hundred and ninety-six and one thousand eight hundred and ninety-seven shall be determined according to their place on the poll at the election, those that were lowest on the poll retiring first. If there was no poll, or if a question arises in consequence of an equality of votes between two or more councillors, the matter shall be determined by ballot conducted under the direction of the council.

(7.) In the case of an urban district divided into wards, the foregoing provisions with respect to retirement shall apply separately to each ward.

(8.) Upon the day on which the first guardians and urban or rural districts councillors elected under this Act come into office, the persons who are then members of boards of guardians, and urban and rural sanitary authorities, shall cease to hold office, but until that day the persons who are at the passing of this Act guardians and members of urban sanitary authorities (for urban districts not being boroughs) and of highway boards shall continue in office notwithstanding any want of qualification, as if the term of office for which they were elected expired on that day, and, except for the purpose of filling casual vacancies or electing additional guardians, no further elections shall be held.

(9.) The first meeting of each district council elected 56 57 Vict, under this Act shall be convened by the returning officer. c- 73. s- 79- (10.) The foregoing provisions shall apply to the existing members and first members elected under this Act of the Local Board of Woolwich and of any vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same, and to the existing and first auditors elected under those Acts in like manner as if they were members of urban sanitary authorities or urban district councillors, as the case may require, except that the date of the annual election shall be substituted for the fifteenth day of April.

(11.) The overseers of any parish divided by this Act shall, until the first appointment of overseers next after the appointed day, continue in office as if they were overseers of each part of the said parish, which by reason of such division becomes a separate parish.

Note. Highway boards. â Sect. 84 provides that where an order of the county council postpones the operation of sect. 25 with respect to highways, as respects their county or any part thereof, their order is to make such provision as may be necessary for holding elections of highway boards during the period of postponement.

Appointed day. â As to the appointed day, see sect. 84 (4).

Sect. 80. â (1.) If any difficulty arises with respect to Power of the holding of the first parish meeting of a rural parish, or county to the first election of parish or district councillors, or of council guardians, or of members of the Local Board of Woolwich, or any vestry in the county of London, or of auditors in the county of London, or to the first meeting of a parish or district council, or board of guardians, or such local board or vestry as aforesaid, or if, from no election being held or an election being defective or otherwise, the first parish or district council, or board

of guardians, or local board or vestry has not been properly constituted, or there are no auditors under the Metropolis Management Acts, 1855 to 1890, or an insufficient number, properly elected, the county council may by order make any appointment or do any thing which appears to them necessary or expedient for the proper holding of any such first meeting or election and properly constituting the parish or district council, board of guardians, local board, or vestry, or auditors, and may, if it appears to them necessary, direct the holding of a meeting or election, and fix the dates for any such meeting or election, 56 57 Vict. but a parish shall, notwithstanding any such failure to c. 73, s. 80. constitute the parish council, be deemed to be a parish having a parish council within the meaning of this Act. Any such order may modify the provisions of this Act, and the enactments applied by or rules framed under this Act so far as may appear to the county council necessary or expedient for carrying the order into effect.

(2.) The Local Government Board shall make regulations for expediting and simplifying the procedure under section fifty-seven of the Local Government Act, 1888, in all cases in the year one thousand eight hundred and ninety-four, for the purpose of bringing this Act into immediate operation, and such regulations may dispense with the final approval of an order by the county council in cases where the prescribed notice of the proposed order has been given before it is made by the county council.

Note. Proceediire as to alterations of areas. â Regulations made by the Local Government Board under sub-sect. (2) will be found in the note to sect. 36, ante, pp. 171-175.

Existing Sect. 81.â (1.) Where the powers and duties of any officers. authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council, and for the purpose of this section the body appointing a surveyor of highways shall be deemed to be a highway authority and any paid surveyor to be an officer of that body.

(2.) Where there is in a rural parish an existing vestry 13 14 Vict. clerk appointed under the Vestries Act, 1850, he shall c- 57. become the clerk of the parish council, and if there is also an assistant overseer in the parish, then, notwithstanding the foregoing provisions of this Act, that assistant overseer shall not, while such vestry clerk holds office, be the clerk of the parish council.

(3.) Any existing assistant overseer in a parish for which a parish council is elected shall, unless appointed by a board of guardians, become an officer of the parish council.

(4.) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

(5.) Where a parish or rural sanitary district is divided by this Act, any officer for the parish or district so divided 56 57 Vict. shall hold his office as such officer for each parish or district c- 73. s- 81. formed by the division, and his salary shall be borne by the respective parishes or districts in proportion to their rateable value at the commencement of the local financial year next after the passing of this Act.

(6.) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed as from the appointed day.

(7.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to 552 vici. existing officers, shall apply in the case of existing officers c. 41. affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the offices affected.

Note. Existing officers. â Definitions of the expressions "existing" and "officer," contained in the Local Government Act, 1888, 1 and rendered applicable to the interpretation of the present Act by sect. 75 (1), are quoted in the note to that section, ante, pp. 245 and 246.

Vestry clerk. â With regard to the office of vestry clerk, see the note to sect. 17, ante, p. 142.

Assistant overseer. â As to assistant overseers, see the note to sect. 5, ante, pp. 22â 25.

Salary of officer in divided area. â The expression "rateable value" means under sect. 75 (2) "the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate." The local financial year next after the passing of the Act commenced on April 1st, 1894. 2

Compensation for loss of office, 6Â r.â Sect. 120 of the Local Government Act, 1888, 3 is as follows:â

"(1.) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue (1) 51 52 Vict. c. 41, s. 100. (3) 51 52 Vict. c. 41, s. 120.

(2) See ante, p. 101.

56 57 Vict, of this Act, or anything done in pursuance of or in con-c. 73, s. 81, n. sequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.



"(2.) Every person who is entitled to compensation, as above-mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

"(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

"(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

"(5.) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

"(6.) The sum payable as compensation to any person in 56 57 Vict, pursuance of this section shall commence to be payable at the c- 73 s- 8i, n. date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

"(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

"(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes."

The compensation allowance in respect of abolition of office in the Civil Service is, under the Superannuation Act, 1859, 1 " such special annual allowance as on a full consideration of the circumstances of the case may seem," to the Treasury, " to be a reasonable and just compensation for the loss of office "; but the allowance is in no case to exceed two-thirds of the salary and emoluments of the office; and, if it

exceeds the amount to which the officer would have been entitled under the scale of superannuation prescribed by the Act if ten years were added to the number of years of actual service, the allowance is to be granted by special minute, stating the special grounds for granting the allowance, which minute is to be laid before Parliament.

The superannuation scale prescribed by the Act 2 allows ten-sixtieths of the annual salary and emoluments of his office to a person who has served ten years, with an addition of one-sixtieth of such salary and emoluments for every additional year of service from ten up to forty. By the Superannuation Act, 1884, 3 it is further provided that where the regulations respecting an office provide that a person appointed thereto must have held a professional or other peculiar qualification for a specified number of years, the number of years so specified may be added to the actual length of service, for the purpose of computing a superannuation allowance under the Act of 1859.

(1) 22 Vict. c. 26, s. 7. (3) 47 48 Vict. c. 54. s. 3.

The Local Government Act, 1894.

Part 56 57 Vict c. 73, s. 82.

Provision as to highways.

Duty to county council to bring Act into operation.

Appointed day.

Sect. 82. â (1.) When before the appointed day the highway expenses were charged on a particular parish or other area and not on a district, the district council may determine that the highways in that parish or area shall be placed in proper repair before the expenses of repairing the same become a charge upon the district, and, failing such highways being placed in proper repair to the satisfaction of the district council, the district council may themselves place the highways in proper repair, and the expense incurred by them of placing those highways in proper repair shall be a separate charge on the parish or area, and any question which arises as to whether any such expenses are properly a separate charge on the parish or area shall be determined by the county council.

(2.) Where in pursuance of an order of a county council a parish continues to maintain its own highways after the appointed day, the highway expenses shall not be deemed to be expenses of the parish council or of the parish meeting within the meaning of this Act.

Sect. 83. â It shall be the duty of every county council to exercise all such of their powers as may be requisite for bringing this Act into full operation within their county as soon as may be after the passing thereof, and a county council may delegate their powers under this Act to a committee.

Sect. 84. â (1.) The first elections under this Act shall be held on the eighth day of November next after the passing of this Act, or such later date or dates in the year one thousand eight hundred and ninety-four as the Local Government Board may fix.

(2.) The persons elected shall come into office on the second Thursday next after their election, or such other day not more than seven days earlier or later as may be fixed by or in pursuance of the rules made under this Act in relation to their election.

(3.) Every division into wards or alteration of the boundaries of any parish or union or district which is to affect the first election shall, if it affects the parishes or parts for which the registers of parochial electors will be made, be made so far as practicable

before the first day of July next after the passing of this Act, and any such division or alteration which after the appointed day may be made on application by the parish council or any parochial electors of any parish, may be made before the appointed day on application by the vestry or a like number of the ratepayers of the parish.

Provided thatâ 56 57 vkt.

(a) If any county council having any such division or c- " s- 4- alteration under consideration so direct, the lists of voters shall be framed in parts corresponding with such division or alteration so that the parts may serve either for the unaltered parish, union, or district, or for the same when divided or altered; and (b) If the county council making such division or alteration on or after the said day and on or before the last day of August one thousand eight hundred and ninety-four so direct, the clerk of the county council shall make such adjustment of the registers of parochial electors as the division or alteration may render necessary for enabling every parochial elector to vote at the first election in the ward, union, or district in which his qualification is situate, and in that case the said division or alteration shall be observed in the case of that election. (4.) Subject as in this Act mentioned, " the appointed day " shall, (a) for the purpose of elections and of parish meetings in parishes not having a parish council, be the day or respective days fixed for the first elections under this Act, or such prior day as may be necessary for the purpose of giving notices or doing other acts preliminary to such elections; and (b) for the purpose of the powers, duties, and liabilities of councils or other bodies elected under this Act, or other matters not specifically mentioned, be the day on which the members of such councils or other bodies first elected under this Act come into office; and (c) for the purpose of powers, duties, and liabilities transferred to a council of a borough by this Act, be the first day of November next after the passing of this Act; and the lists and registers of parochial electors shall be made out in such parts as may be necessary for the purpose of the first elections under this Act.

Provided that where an order of a county council postpones the operation of the section with respect to highways as respects their county or any part thereof the day on which such postponement ceases shall, as respects such county or part, be the appointed day, and the order of postponement shall make such provision as may be

The Local Government Act, 1894.

Part 56 57 Vict, c. 73, s. 84.

Current rates, c.

Saving for existing securities and discharge of debts.

necessary for holding elections of highway boards during the interval before the appointed day.

Sect. 85.â (1.) Every rate and precept for contributions made before the appointed day may be assessed, levied, and collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

(2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as practicable after the appointed day; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any



portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office, and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day.

(3.) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and any such legal proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of this Act.

(4.) Every valuation list made for a parish divided by this Act shall continue in force until a new valuation list is made.

(5.) The change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers, and any enactment in any Act, whether public general or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.

Sect. 86. â (1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to 56 57 Vict, continue the levy of any rate or the exercise of any c- 73. s. 86. power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require.

(2.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate so far as practicable before the appointed day, all current debts and liabilities incurred by such authority.

Sect. 87. â All such byelaws, orders, and regulations Saying for of any authority, whose powers and duties are transferred Â by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly.

Sect. 88.â (1.) If at the time when any powers, duties, Saving for liabilities debts, or property are by this Act transferred J J c to a council or parish meeting, any action or proceeding, or any cause of action or proceeding is pending or existing by or against any authority in relation thereto the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed.

(2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in

favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

Sect. 89.â The Acts specified in the Second Schedule Repeal, to this Act are hereby repealed as from the appointed day to the extent in the third column of that schedule mentioned, and so much of any Act, whether public general or local and personal, as is inconsistent with this Act is also hereby repealed. Provided that where any wards of an urban district have been created, or any number of members of an urban sanitary authority fixed, by or in pursuance of any local and personal Act, such wards and number of members shall continue and be 56 57 Vict, alterable in like manner as if they had been fixed by an c 73. s- 89- order of the county council under this or any other Act.

Note. Repeal. â With regard to the effect of the repeal of an enactment the Interpretation Act, 1889, 1 contains the following provisions:â

Sect. 11.â " (1.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment."

"(2.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation."

Sect. 38.â " (1.) Where this Act or any Act passed after the commencement of this Act repeals, and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

"(2.) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall notâ  
" (a.) revive anything not in force or existing at the time at which the repeal takes effect; or " (b.) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or " (c.) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or "(d.) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or " (e.) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed."

(1) 52 53 Vict, c 63.

56 57 Vict.

c-73-Sched. i.

SCHEDULES.

FIRST SCHEDULE. Section 11 2.

Rules as to Parish Meetings, Parish Councils, and Committees.

PART I.

### Rules applicable to Parish Meetings.

(1.) The annual assembly of the parish meeting shall be held on the twenty-fifth day of March in each year, or within seven days before or after that day.

(2.) Not less than seven clear days before any parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by the chairman of the parish council or other conveners of the meeting.

Note. Notice of Parish Meeting. â As to the manner of giving notice of a parish meeting see sect. 51, and the note to that section. By that section the notice is to be posted at the church doors on a Sunday; it must therefore by virtue of the present rule be posted on the Sunday week before the meeting at latest.

For instances where neglect to give the proper notices for a meeting of a public body has been held to invalidate the acts of the body done at the meeting, reference may be made to the cases cited below. 1

It would seem that the parish meeting might adjourn, and that no notice of the adjourned meeting would be required; provided no business were transacted at the adjourned meeting, other than business of which notice had been given for the original meeting. 2 (3.) If the business relates to the establishment or dissolution of a parish council, or the grouping of a parish, or the adoption of any of the adoptive Acts, not less than fourteen days' notice shall be given.

Note. Notice of Parish Meeting. â See the note to the preceding rule. A notice under the present rule will have to be posted on the Sunday fortnight before the meeting at latest.

(4.) A parish meeting may discuss parish affairs and pass resolutions thereon.

(1) Dobson v. Fussey (1831), 7 (2) Scadding v. Lorant (1851)

Bing. 305; 5 Moo. P. 112; 3 H. L. G. 418; 15 Jur. 955; Kerr

Siwth v. Darley (1849), 2 H. L. C. v. Wilkie (1860), 6 Jur. (n. s.) 383; 789. 1 L. T. 501; 8. W. R. 286.

6 VJct (5.) Every question to be decided by a parish meeting c? 73. Â shall, in the first instance, be decided by the majority of

Sched. i. those present and voting on the question, and the chairman shall announce his decision as to the result, and that decision shall be final, unless a poll is demanded.

(6.) A poll may be demanded at any time before the conclusion of a parish meeting.

(7.) A poll may be demanded by any one parochial elector in the case of a resolution respecting any of the following matters, namely:â (a.) Any application, representation, or complaint to a county council or district council; (.) The appointment of a chairman for the year or of a committee, or the delegation of any powers or duties to a committee, or the approval of the acts of a committee; (c.) The appointment of an overseer, the appointment or revocation of the appointment or dismissal of an assistant overseer or a parish officer; (d.) The appointment of trustees or beneficiaries of a charity; (e.) The adoption of any of the adoptive Acts; (.) The formation or dissolution of a school board; (jjf.) The consent or refusal of consent to any act, matter, or thing which cannot by law be done without that consent; (h.) The incurring of any expense or liability; (i.) The place and time for the assembly of the parish meeting; (k.) Any other prescribed matter; but, save as aforesaid, a poll shall not be taken unless either the chairman



of the meeting assents, or the poll is demanded by parochial electors present at the meeting, not being less than five in number or one third of those present, whichever number is least.

(8.) In case of an equal division of votes at a parish meeting the chairman shall have a second or casting vote.

(9.) Where a parish meeting is held for the election of parish councillors, opportunity shall be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them, and any candidate shall be entitled to attend the meeting and speak thereat, but, unless he is a parochial elector, not to vote.

(10.) If the chairman of the parish meeting is absent from or unwilling or unable to take the chair at any assembly of the parish meeting, the meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

(11.) Any notice required to be given to or served on a parish meeting may be given to or served on the chairman of the parish meeting.

## PART II. gjg,

### Bules applicable to Parish Councils.

(1.) Every parish councillor shall, at the first meeting after his election, or if the council at the first meeting so permit, then at a later meeting fixed by the council, sign, in the presence of some member of the council, a declaration that he accepts the office, and if he does not sign such a declaration his office shall be void.

(2.) If any casual vacancy arises in the council, the council shall forthwith be convened for filling the vacancy.

(3.) The first business at the annual meeting shall be to elect a chairman and to appoint the overseers.

(4.) The chairman may at any time convene a meeting of the parish council. If the chairman refuses to convene a meeting of the council after a requisition for that purpose signed by two members of the council has been presented to him, any two members of the council may forthwith, on that refusal, convene a meeting. If the chairman (without so refusing) does not within seven days after such presentation, convene a meeting, any two members of the council may, on the expiration of those seven days, convene a meeting.

(5.) Three clear days at least before any meeting of a parish council notice thereof, specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by or on behalf of the chairman of the parish council or persons convening the meeting, shall be given to every member of the parish council, and in case of the annual meeting notice specifying the like particulars shall be given to every member of the parish council immediately after his election.

Note. Notice of Meeting of Parish Council. â By the next rule the notice mentioned above, may be left at, or sent by post to, the usual place of abode of a member of the parish council. As to the consequences of neglect to give proper notices, and as to notices of meetings by adjournment, see the note to rule 2 in the first part of the present schedule.

(6.) Any notice required by law to be given to the chairman or any other member of the parish council may be left at or sent by post to the usual place of abode of such chairman or member.

Note. Service of Notice by Post. â Under the Interpretation Act, 1889 a notice sent by post under this rule will be deemed to have been duly given, if a letter containing the notice was properly addressed, stamped and posted; and the notice, unless the contrary is proved, will be taken to have reached the member of the council to whom it was addressed at the time the letter would be delivered in the ordinary course of post.

(7.) No business shall be transacted at any meeting of a (3) 52 53 Vict. c. 63, s. 26, set out in the note to sect. 75, ante, p. 249.

56 57 Vict.

c 73-. Sched. i. Section 3.

56 57 Vict, parish council unless at least one third of the full number of c- 73 members are present thereat, subject to this qualification, c e ' ' that in no case shall the quorum be less than three.

(8.) The names of the members present at any meeting of the parish council, as well as of those voting on each question on which a division is taken, shall be recorded, so as to show whether each vote given was for or against the question.

(9.) Every question at a meeting of a parish council shall be decided by a majority of votes of the members present and voting on that question.

(10.) In case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

(11.) The parish council may, if they think fit, appoint one of their number to be vice-chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman.

(12.) The proceedings of a parish council shall not be invalidated by any vacancy among their members, or by any defect in the election or qualification of any members thereof.

(13.) A parish council shall hold not less than four meetings in each year, of which one shall be the annual meeting and every such meeting shall be open to the public unless the council otherwise direct.

(14.) Every cheque or other order for payment of money by a parish council shall be signed by two members of the council.

(15.) Any notice required to be given to or served on a parish council may be given to or served on the clerk to the parish council.

(16.) The parish council may appear before any court or in any legal proceeding by their clerk or by any officer or member authorised generally or in respect of any special proceeding by resolution of the council, and their clerk or any member or officer shall, if so authorised, be at liberty to institute and carry on any proceeding which the parish council are authorised to institute and carry on.

Sections 2, 3. PAET III.

General.

(1.) Minutes of the proceedings of every parish council and parish meeting shall be kept in a book provided for that purpose.

(2.) A minute of proceedings at a meeting of a parish council, or of a committee of a parish or district council, or at a parish meeting, signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed, shall 56 57 Vict, be received in evidence without further proof. Sched i (3.) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

(4.) Any instrument purporting to be executed under the hands or under the hands and seals of the chairman and of two other members of a parish council or of a parish meeting shall, until the contrary is proved, be deemed to have been duly so executed.

(5.) Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of their proceedings and business, and of the proceedings and business at parish meetings for a rural parish having a parish council.

(6.) Where there is no council for a rural parish, the parish meeting may, subject to the provisions of this Act, regulate their own proceedings and business.

PAET IV. Section 56.

Proceedings of Committees of Parish or District Councils.

(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the council or councils appointing the committee.

(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting; vote.

The Local Government Act, 1894.

Sch.

56 57 Vict.

c 73-Sched. ii.

SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.

54 Geo. 3, c. 91 58 Geo. 3, c. 69 59 Geo. 3, c. 85 1 2 Will. 4, c. 60 4 5 Will. 4, c. 76

Short Title.

An Act to amend so much of an Act passed in the forty-third year of Her late Majesty Queen Elizabeth, as concerns the time for appointing overseers of the poor.

The Vestries Act, 1818.

The Vestries Act, 1819.

The Vestries Act, 1831.

The Poor Law Amendment Act, 1834.

Extent of Repeal.

The whole Act, so far as it relates to rural parishes.



Sections one, two, three, and four, so far as they relate to parish meetings and parish councils under this Act.

The whole Act, so far as it relates to parish meetings under this Act.

The whole Act, so far as it relates to parish meetings under this Act, except section thirty-nine.

In section thirty-eight, the words "and the said guardians shall be elected by the ratepayers and by such owners of property in the parishes forming such union as shall in manner hereinafter mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively "; and from "and also fix a qualification " to " for the ensuing year shall be chosen "; and from " and every justice of the peace" to "as such elected guardians "; and from "Provided also" to the end of the section.

Schedules.

Session and Chapter.

Short Title.

4 5 Will 4, c. 76 (continued).

5 6 Will. 4, c. 50 7 Will. 4, and 1 Vict. c. 45.

5 6 Vict. c. 57 7 8 Vict. c. 101.

13 14 Vict. c. 57 14 15 Vict. c. 105 16 17 Vict. c. 65 18 19 Vict. c. 120

The Poor Law Amendment Act, 1834 (continued).

The Highway Act, 1835.

The Parish Notices Act, 1837.

The Poor Law Amendment Act, 1842.

The Poor Law Amendment Act, 1844.

The Vestries Act, 1850.

The Poor Law Amendment Act, 1851.

The Vestries Act, 1853.

The Metropolis Management Act, 1855.

Extent of Repeal.

56 57 Vict.

c 73-. Sched. ii.

Section thirty-nine, from " and every justice" to the end of the section.

In section forty, the words " In all cases of the election of guardians under this Act or."

Section forty-one.

Section forty-eight from " Provided always" to the end of the section, so far as the words repealed relate to the office of parish or district councillor or guardian.

In section forty-eight, the words "with the consent in writing of the justices of the peace at a special sessions for the highways" and the words " at and for such price as the said justices may deem fair and reasonable."

Section three, so far as it relates to notices by parish councils and notices of parish meetings under this Act.

Section eight, section eleven, from " and in every case," to the end of the section, and section fifteen.

Sections seventeen, twenty, and twenty-four, and section sixty-one from " and wherever any such collector " to " provisions of this Act."

Sections six, seven, eight, and nine, so far as they relate to parish meetings under this Act.

Section two and section three.

The whole Act, so far as it relates to parish meetings under this Act.

Section six.

Sections thirteen to twenty-seven.

In section thirty the words " or custom."

Section fifty-four.

In section two hundred and thirty-five the words "under this Act," where they secondly occur.

The Local Government Act, 1894.

Sch.

56 57 Vict.

c 73-.

Sched. ii.

Session and Chapter.

19 20 Vict. c. 112 23 24 Vict. c. 30 25 26 Vict. c. 102 25 26 Vict. c. 103 30 31 Vict. c. 6.

30 31 Vict. c. 106 31 32 Vict. c. 122 38 39 Vict. c. 55

The Metropolis Management Amendment Act, 1856.

The Public Improvements Act, 1860.

The Metropolis Management Amendment Act, 1862.

The Union Assessment Act, 1862.

The Metropolitan Poor Act, 1867.

The Poor Law Amendment Act, 1867.

The Poor Law Amendment Act, 1868.

The Public Health Act, 1875.

Extent of Repeal.

Sections six, seven, and eight.

In section four the words "in value."

Section thirty-six; and section forty from "by rating" to " of such parish."

In section two, the words " consisting partly of ex officio and partly of elected guardians," and from " Provided always " to the end of the section.

In section five, the words " ex officio or elected," in both places where they occur, and the words, " as the case may be."

Section seventy-nine.

Sections four, five, six, and nine, section ten so far as it relates to elections of guardians, and section twelve.

Section four, from "and the powers" to the end of the section.

Section eight from "and the number" to the end of the section. In section nine, from " Provided that (1) An ex officio guardian " to " situated in an urban district" (being the provisoes); and the words " from owners or occupiers of property situated in the

rural district of a value sufficient to qualify them as elective guardians for a union," and from " Subject to the provisions of this Act" to the end of the section.

Section two hundred, except so far as it applies to boroughs; sections two hundred and one and two hundred and four, section two hundred and forty-eight, except so far as it relates to overseers, and section three hundred and twelve.

So much of Schedule I. as relates to committees, and Schedule II. Schedules.

Session and Chapter.

39 40 Vict. c. 61 39 40 Vict. c. 79

Short Title.

47 48 Vict. c. 70 48 49 Vict. c. 53 55 56 Vict. c. 53

Extent of Repeal.

The Divided Parishes and Poor Law Amendment Act, 1876.

The Elementary Education Act, 1876.

The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

The Public Health (Members and Officers) Act, 1885.

The Public Libraries Act, 1892.

56 57 Vict.

c- 73-Sched. ii.

Section six, from " The meeting of inhabitants" to the end of the section, so far as it relates to rural parishes. Section eight to " no alteration," except as to cases "where a parish is dealt with by order of the Local Government Board.

In section seven the words " so however that in the case of a committee appointed by guardians one third at least shall consist of ex officio guardians, if there are any and sufficient ex officio guardians."

Section thirty-six from "(7t.) The Local Government Board" to " validity of any vote."

Sections three and four.

Sub-section three of section one. The First Schedule so far as it applies to rural parishes.

35 36 Vict. c. 33.

APPENDIX I.

CONTAINING

Statutes relating to Parish and District Councils arranged chronologically.

THE BALLOT ACT, 1872.

35 36 Vict., c. 33.

An Act to amend the law relating to procedure at parliamentary and municipal elections. 18th July, 1872.

Note. Application of the Act under the Local Government Act, 1894.â Under sect. 48 (3) of the Local Government Act, 1894, 1 the present Act will, subject to the provisions of that Act, and subject to adaptations, alterations and exceptions made by rules framed by the Local Government Board, apply to every election regulated by rules framed under that Act, " in like manner as in the case of a municipal election."

It will therefore apply to elections of parish councillors, 2 guardians, 3 district councillors of a county district other than a borough, 4 members of the local board



of Woolwich, members of metropolitan vestries under the Metropolis Management Acts, and auditors elected under those Acts. 5

It will also apply in a similar manner to every poll consequent on a parish meeting. 6

The expression " municipal election " is not defined for the purposes of the Local Government Act, 1894. It appears however clear that it is intended to mean the election of a borough councillor. In the present Act the expression means an election of a borough councillor or of an elective auditor. 7

Pending the issue of the rules that are to be framed under the Local Government Act, 1894, it is futile to speculate upon the precise manner in which the present Act will apply under sect. 48 of that Act. The Act has accordingly been annotated with reference, almost exclusively, to the election of borough councillors.

Application of the Act to Municipal Elections. â Portions of the present Act apply directly to municipal elections. 7 Other portions apply directly to parliamentary elections only; but so much of the latter portions of the Act as relates to the poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll) is rendered applicable to the election of borough councillors by the Municipal Corporations Act, 1882, subject to the modifications contained in that Act, and to the modifications contained in Rule 64 in the first schedule to the present Act. 8 (1) 56 57 Vict. c. 73, s. 48 (3). (8) See the Municipal Corporations (2) lb. s. 3 (6). Act, 1882 (45 46 Vict. c. 50) s. 58, (3) lb. s. 20 (5), and see s. 30 and third schedule, Part III., post.

(4) lb. ss. 23 (5), 24 (4). The Act of 1882 contains no express (5) lb. s. 31 (1). reference to the modifications of the (6) flu s. 48 (8). present Act for the purposes of municipi- (7) See s. 29, and the note to that pal elections contained in the schedules. section. The operation of such modifications 30 Vtct. Omitted portions of the Act. â The only unrepealed portions of the Act c. 33. omitted from the present work, are:â the third schedule, the effect of which sufficiently appears in the note to sect. 24; the fourth schedule, which contains a list of repealed enactments; and portions of the Act clearly not applicable to municipal elections in England, or to elections under the Local Government Act, 1894.

Sects. 20, 21, and 30, and portions of sect. 24, and of the second schedule, which originally applied to municipal elections in England have been repealed either wholly or as regards England. 1

## PAET I.

### Parliamentary Elections. Procedure at Elections.

Poll at elections. Sect. 2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of

the officer presiding at the polling station (in this Act called " the presiding officer ") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Note. Conduct of Poll. â The present section prescribes in general terms the method in which the voting at a contested election is to be conducted. Rules and forms providing with considerable detail for carrying out the provisions of the section are contained in the schedules to the Act.

Marking of Ballot Paper. â A ballot paper "must be marked so as to show that the voter intended to vote for some one, and so as to show for which of is however apparently preserved 1882, and replaced by the provisions by sect. 242 of the first-mentioned of that Act above mentioned.

Act. Sect. 20 of the present Act, (1) 38 39 Vict. c. 40, s. 12; 45 which formerly regulated the appli 46 Vict. c. 50, ss. 5, 260; 46 47 cation of the Act to the conduct of Vict. c. 51, s. 66; Statute Law Re- the poll in the case of a municipal vision (Xo. 2) Act, 1893.

election, was repealed by the Act of the candidates he intended to vote. It must not be marked so as to show 35 36 Vict.

that he intended to vote for more candidates than he is entitled to vote for, c. 33. nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted. If these requirements are substantially fulfilled, then there is no enactment and no rule of law by which a ballot paper can be treated as void, though the other directions in the statute are not strictly obeyed. If these requirements are not substantially fulfilled, the ballot paper is void, and should not be counted; and, if it is counted, it should be struck out on a scrutiny. The decision in each case is upon a point of fact, to be decided first by the returning officer, and afterwards by the election tribunal, on petition." 1

In the case from the judgment in which the above quotation is taken, certain ballot papers had the name of the candidate or of the voter written opposite the name of the former, and one paper was marked with a cross and the letters " cu." These were held bad as enabling the voter to be identified. Other papers were marked respectively with two or three crosses, with a single stroke, with a cross and a mark like a P, a star, a cross marked tremulously, and with a cross placed on the left-hand side of the ballot

paper; one paper had a cross opposite one candidate's name, and the name of the other candidate struck through in pencil; another paper was properly marked, but torn longitudinally through the centre. These papers were, in the absence of any evidence of connivance or arrangement, held to be good.

In the same case it appeared that the presiding officer at one station, before delivering the ballot papers to the voters, marked each paper with the number on the register of the voter to whom it was given. These ballot papers were held bad, as any person present a; the counting could have identified the several voters.

In the same case certain illiterate voters presented themselves to vote, and the presiding officer marked ballot papers by their direction; but, instead of proceeding strictly in accordance with the rule of the first schedule dealing with the case, 2 he wrapped each of these ballot papers in the voter's declaration of inability to read, and then placed it in the ballot box. These votes could have been, but were not, identified by the returning officer. It was held that the votes were good.

In another case 3 it was held that a ballot paper was good which was marked with the official mark on the back only.

In a case relating to a school board election held under the present Act as applied by the Elementary Education Act, 1873, 4 a ballot paper was held good in which the voter had indicated the number of votes he intended to give a candidate by marking his ballot paper with several crosses instead of with a number. 5

The following decisions with regard to the marking of ballot papers have been given at the trial of election petitions:â

In the *Berwick Case* a very faintly marked ballot paper was counted, *Hawkins, J.*, saying, "A mark made with ink or with a piece of burnt stick is just as good as a mark made with pencil, and I cannot see any reason why a mark made in any other way is not just as good": a paper marked with a cross was counted for the candidate opposite whose name the intersection of the cross was, though the lines constituting the cross extended far into the space opposite the other candidate's name; but a paper marked on the back only was rejected.

(1) *Woodward v. Sarsons* (Bir- L. J. Q. B. 27.?).

*mingham Municipal Petition* (1875) (4) 36 37 Vict. c. 86, second

L. R. 10 C. P. 733, at p. 748; S. C. schedule, rule 1.

44 L. J. C. P. 293; 32 L. T. 867. (5) *Phillips v. Goff* (188G), 17 (2) Rule 26. Q. B. D. 805; 55 L. J. Q. B. 512; (3) *Ackers v. Howard* (Thomhvry 35 W. R. 197; 50 J. P. 614. *Petition*) (1886), 16 Q. B. D. 739; 54 (6) *Berwick-upon-Tweed Petition* L. T. 651; 34 W. It. 609; 50 J. P. McLaren v. Home) (1380), 3 O'M. 519; S. G. nom. Ahers v. Howard, 55 H. 178.

15 S; 36 Vict. In the *Stepney Case* 1 a paper marked with a cross at the top of the paper c. 33. opposite the words "Ballot Paper," and a paper marked with a circle 2 instead of a cross, were rejected: but the Court were divided as to the validity of a paper upon the back of which were a cross and the name " John Mitchett," which was not the name of either candidate or of any voter on the register.

In the *Buckrose case* 3 a paper with a cross not opposite either candidate's name, but in the right-hand top corner of the paper, a paper marked on the back only, a paper marked with a cross opposite one candidate's name and a line opposite the



other candidate's name and having the corner torn off, a paper marked with a cross to the left of one candidate's name and with a line to the right of the other candidate's name, and a paper marked with a cross immediately upon one candidate's name, were rejected; but a paper with the figures "33" on the back, a paper properly marked on the face opposite one candidate's name but having a cross on the back opposite the other candidate's name, and a paper marked with a circle 4 instead of a cross, were counted.

In the Cirencester Case 5 ballot papers were counted that were marked with the official mark on the face only, but in such a way that the ink forced its way through the paper and made a mark on the back sufficient to indicate that it had been caused by the application of the stamp to the front.

Returning Officer. â The rules to be framed under the Local Government Act, 1894, are to provide for the appointment of returning officers for elections under that Act. 6 At an election of borough councillors, the mayor, in the case of an election for the whole borough, or an alderman assigned for the purpose by the council, in the case of a ward election, acts as returning officer. 7

Duty of presiding officer. â It is the duty of the presiding officer to deliver to the voters voting papers bearing the official mark, to be present during the election so that the voters can show him the marks on the backs of the papers, 8 and to ascertain, before a voter deposits his paper in the box, that the official mark is on the paper. 9 These duties he may however delegate to properly appointed clerks under Rule 50 in the first schedule, and in that case he ceases to be responsible for their proper performance. 10

Candidates' agents. â As to these agents, see sect. 58 (6) of the Municipal Corporations Act, 1882, 11 and the note to that section, post.

Declaration of result. â The returning officer's duty is simply to declare the result of the election in accordance with the number of votes given to the several candidates. He has no jurisdiction to declare a candidate in a minority elected, on the ground that the candidate with the majority of votes is disqualified for the office. 12

No return to the Clerk of the Crown in Chancery is made in the case of a municipal election. 13

Omitted portion of the section. â The omitted portion of the section gives the returning officer, a casting vote in certain cases; it is inapplicable in the case of municipal elections. 14 (1) *Stepney Petition* (*Isaacson v. ing*, 29 L. T. 210.

*Durant* (1886), 4 O'M. H. 34; (9) *Ackers v. Howard* (*Thornbury* 54 L. T. 684. *Petition*, ante, p. 275). In *Pickering v.*

(2) See the *Cirencester Case*, *infra*. *James*, *ubi sup.*, the judges were (3) *Buckrose Petition* (*Sykes v. equally divided on this question. Mcarthur*) (1886), 4 O'M. H. 110. (10) *Pickering v. James*, *ubi sup.*

(4) See the *Stepney Case*, *supra*. (11) 45 46 Vict. c. 50, s. 58 (6).

(5) *Cirencester Petition* (*Lawson v. (12) Pritchard v. Bangor* (Mayor, *Chester-Master*) (1893), 4 O'M. H. c.) (1888), 13 App. Cas. 241; 57 194. L. J. Q. B. 313; 58 L. T. 502; 37 (6) 56 57 Vict. c. 73, s. 48 (2). W. R. 103; 52 J. P. 564. ,

(7) *Municipal Corporations Act*, (13) *Municipal Corporations Act*, 1882, (45 46 Vict. c. 50) s. 53. 1882 (45 46 Vict. c. 50), third (8) *Pickering v. James* (1873) L. R. schedule, Part III. Â 6. 8 C. P. 489; 42 L. J. C. P. 217; 21 (14) P. Â 1.

V. R. 786; S. C. nom. *Jones v. Picker-*



before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the (1) As to offences relating to Vict. c. 50), s. 74. nomination papers in the case of a (2) *Peg. v. Beardsall* (187G) 1 municipal election, see the Municipal Q. B. D. 452; 45 L. J. M. C. 157:

Corporations Act, 1882 (45 46: J4 L. T. 660.

35 36 Vict. official mark, and no such officer, clerk, or agent, and no person whosoever, c. 33. shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Even-officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Note. Secrecy of Ballot. â Rule 54 in the First Schedule provides for the making of a statutory declaration of secrecy by every returning officer, and by every officer, clerk, or agent authorised to attend at a polling station or at the counting of the votes.

In order to justify a conviction for an infringement of the secrecy of the ballot under the present section, it is not sufficient to show that the defendant has afforded other persons the means of acquiring information in contravention of the section; it must appear that such information actually reached the mind of some person. 1

Amendment of Lav. Use of school and Sect. G. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

Note. Application of Section. â The present section is inapplicable to a municipal election, 2 it will, however, apply to elections under the Local Government Act, 1894.



General powers Sect. 8. Subject to the provisions of this Act, every returning officer and duties of shall provide such nomination papers, polling stations, ballot boxes, ballot returning officer. p., p ers) stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as (1) *Stannanought v. Hizeldine* 1882 (45 46 Vict. c. 50) third O870) 4 C. P. D. litl; 48 L. J. M. C. schedule, part III. Â 1.

89; 40 L. T. 580; 27 W. R. 620. (3) 5'i 57 Vict. c. 73, s. 48 (3).

(2) Municipal Corporations Act, may be necessary for effectually conducting an election in manner 35 36 Vict, provided by tthis Act. c â-

Note. Municipal elections. â The provisions of the present section as to nomination papers are inapplicable in the case of a municipal election. 1 The requisites for a poll mentioned in the section are, in the case of such an election, to be provided by the mayor, who is also to appoint officers for taking the poll and counting the votes. 2 Further provisions as to polling stations and requisites for the poll are contained in sect. 14 and in Rules 15, 17, and 20â 23 in the First Schedule to the present Act, and in the Third Schedule to the Municipal Corporations Act, 1882. 3

As to the meaning of the expression "register of voters " in the case of a municipal election, see the First Schedule, Rule 61 (()â

Elections under the Local Government Act, 1894.â For the purposes of these elections the returning officer is empowered to borrow various requisites for the poll. 4

Omitted Portion of Section. â The omitted portion of the section relates to parliamentary elections exclusively.

Sect. 9. If any person misconducts himself in the polling station, or Keeping of order fails to obey the lawful orders of the presiding officer, he may inime- in station diately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any off. nee, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Sect. 10. For the purpose of the adjournment of the poll, and of every rowers of pre-other enactment relating to the poll, a presiding officer shall have the Jggiggj power by law belonging to a deputy returning officer; and any presiding o oathbj c officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Note. Municipal elections. â In the case of a municipal election the officers for taking the poll are appointed by the mayor under the Municipal Corporations Act 1882. 3 As to the questions that may be asked of voters at such an election, see sect. 59 of that Act. 6

Declarations authorised by the Act. â As to these declarations, see the First Schedule, Rule 54.

Sect. 11. Every returning officer, presiding officer, and clerk who is Liability. if â guilty of any wilful misfeasance or any wilful act or omission in Â 5 formi9 ' contravention of this Act shall, in addition to any other penalty or co liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds.

Section fifty of the Representation of the People Act, 1867, (which 30 31 Vict.

(1) Municipal Corporations Act, (3) lb. third schedule, part III. 1882 (45 46 Vict. c. 50) third (4) 56 57 Vict, c.73, s. 48 (6). schedule, part II., rule 6. (5) 45 46 Vict. c. 50, Third (2) lb. third schedule, part. III. Schedule, Part III. Â 3, post. Â 3. (6) lb. s. 59.

#### Appendix I.

35 36 Vict, relates to the acting of any returning officer, or his partner or clerk, as c. 33. agent for a candidate.) shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk.

Note. Misconduct of Officers. â Penalties are imposed on a returning officer at a municipal election in respect of certain breaches of duty by the Municipal Corporations Act, 1882."

As to the liability of returning and presiding officers to actions in respect of breaches of duty on their part, see the cases cited below. 2

Representation of the People Act, 1867.â Sect. 50 of this Act 3 provides that:â

"No returning officer for any county or borough, nor his deputy, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk of either of them, shall so act, he shall be guilty of a misdemeanor."

Nou-compliance with rules.

Miscellaneous.

Prohibition of Sect. 12. No person who has voted at an election shall, in any legal disclosure of proceeding to question the election or return, be required to state for whom he has voted.

Note. Disclosure of Vote. â An almost exactly similar provision is contained in the Municipal Corporations Act, 1882. 4

Sect. 13. No election shall be declared invalid by reason of a noncompliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

Note. Irregularities at elections.â In a case already referred to in the note to sect. 2, ante, 5 an election was petitioned against on the ground that a number of irregularities had been committed in the course of the election; and Lord Coleridge, C. J., delivering the judgment of the Court, 6 after stating the facts and the arguments, said:â

"The questions raised for decision seem to be,â first, what is the true statement of the rule under which an election may be avoided by the common law of Parliament?â secondly, is the present case brought within the rule?â thirdly, whether a breach of the Ballot Act can, as such, be a ground for avoiding an election,â fourthly, if yes, can this election be thereby avoided?

"As to the first, we are of opinion that the true statement is that an election is to be declared void by the common law applicable to parliamentary elections, if it was so conducted that the tribunal which is asked to avoid it is satisfied, as a matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws. As to the first, the tribunal should be so satisfied, i. e. that there was no real electing by the constituency at all, if it were proved to its satisfaction that the constituency had not in" fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, (1) 45 46 Vict. c. 50, s. 75.

(2) *Tozer v. Child* (1857), 7 E. B. 377; 26 L. J. Q. B. 151; 3 Jur. (N. S.) 409; *Pickering v. James* (1873), L. R. 8 C. P. 489; 42 L. J. C. P. 217; 21 W. R. 786; S. C. mm. *Jones v. Pickering*, 29 L. T. 210.

(3) 30 31 Vict. c. 102. s. 50.

(4) 45 46 Vict. c. 50, s. 104.

(5) *Woodward v. Sarsons* (Birmingham Municipal Petition) (1875), L. R. 10 C. P. 733; 44 L. J. C. P. 293; 32 L. T. 867.

(6) *Brett, Archibald and Denman, JJ.*

if a majority of the electors were proved to have been prevented from 35 36 Vict. recording their votes effectively according to their own preference, by general c. 33.

corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting. or by other such acts or mishaps. And we think the same result should follow if, by reason of any such or. similar mishaps, the tribunal, without being able to say that a majority had been prevented,. should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred. But, if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think the existence of such mishaps would not entitle the tribunal to declare the election void by the common law of

Parliament.

"As to the second, i. e. that the election was not really conducted under the subsisting election laws at all, we think, though there was an election in the sense of there having been a selection by the will of the constituency, that the question must in like manner be, whether the departure from the prescribed method of election is



so great that the tribunal is satisfied, as matter of fact, that the election was not an election under the existing law.

"But then it is urged that there has been a breach of the Ballot Act, and therefore the election is by virtue of the Act itself void. This is the third question that was raised in argument before us. It is said that sect. 13, though it is in a negative form, assumes as an affirmative proposition that a non-compliance with the rules, or any mistake in the use of the forms, would render an election invalid, unless it appeared that the election was conducted in accordance with the principles laid down in the body of the Act and that such non-compliance or mistake did not affect the result of the election. If this proposition be closely examined, it will be found to be equivalent to this, that the non-observance of the rules or forms, which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the voters, or, in other words, the result of the election. It therefore is, as has been said, an enactment *ex abundanti cautela*, declaring that to be the law applicable to elections under the Ballot Act which would have been the law to be applied if this section had not existed. It follows that, for the same reasons which prevent us from holding that this election was void at common law, we must hold that it is not void under the statute."

In another case, 1 a candidate was nominated twice. One nomination paper was good and the other bad. The mayor erroneously entered the candidate's name twice in the ballot papers, as if he had been two candidates, describing him once in accordance with the good nomination paper and once in accordance with the bad nomination paper. Some voters voted for him by marking the ballot paper opposite the one entry of his name, and some by marking the ballot paper opposite the other entry. It was held that, having regard to the present section, both sets of votes were good and that the two sets of votes ought to be added together in order to ascertain the total number of votes to which the candidate was entitled.

Sect. 1-4. "Where a parliamentary borough and municipal borough or of municipal occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary election, borough or such municipal borough may be used in any municipal or and vice versa. parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid a3 part of the expenses of the election at which they are so used.

(1) *Northcote v. Puisseford* (Barnes) L. R. 10 C. P. 47G; 44 L. J. C. P. 216 Municipal Petition) (1875), 217; 32 L. T. 602, 23 W. R. 700.

35 30 Vict. Note. Requisites for the Poll. Under the Local Government Act, 1894," c. 3.3. the returning officer "at an election under that Act is empowered to borrow requisites for the poll from any public authority.

Construction of Sect. 15. This part of this Act shall, so far as is consistent with the Act tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject matter of this part of this Act, and terms used in

this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto shall be equivalent to "voling" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.

### PART III.

#### Personation.

Definition and Sect. 24 The following enactments shall be made with respect to per- punishment of sonation at parliamentary and municipal elections: personation. j p erson shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they shall apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

Note. Repeal. â The omitted portions of the section are repealed by the Corrupt and Illegal Practices Prevention Act, 1883. 2

Personation. â With regard to the definition and punishment of the offence (1) 56 57 Vict. c. 73, s. 48 (6). (2) 46 47 Vict. c. 51, s. 66.

of personation, see the note to sect. 2 of the Municipal Elections (Corrupt and 35 30 Vict. Illegal Practices) Act, 1884.Â c. 33.

Provisions of the Registration Act. â The enactments specified in the third. sched- ule, 2 are as follows:â

Sect. 85. "It shall be lawful for any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such

election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed."

Sect. 86. "If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: provided always, that nothing herein contained shall be construed or taken to authorise any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorised by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorised and required of him; but the said returning officer, or his deputy, shall cause the words, ' protested against for personation,' to be placed against the vote of the person so charged with personation when entered in the poll book."

Sect. 87. " Every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorised and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll then such person shall forthwith be discharged from custody: provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged."

Sect. 88. "If on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices to commit the



said offender to the (1) 47 48 Vict. c. 70, s. 2, post. mentary Registration Act, 1813 (6 (2) Sects. 85-89 of the Parlia- 7 Vict. c. 15).

#### Appendix I.

35 36 Vict, gaol of the county, city, or borough within which the offence was committed c. 33. to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanors."

Sect. 89. "If the said justices shall on the hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or someone on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid withing twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of Her Majesty's Superior Courts of Record at Westminster: provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension."

With regard to the applicability of the first four of the sections of the Parliamentary Registration Act, 1843, above quoted, 1 to municipal elections, see also sect. 86 of the Municipal Corporations Act, 1882. 2

#### PART IV.

Effect 'f schedules.

Definitions.

"Municipal borough:"

"Municipal

Corporation Acts:"

Miscellaneous.

Sect. 28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

Note. Effect of schedules. â With regard to the effect of any disregard of the provisions contained in the schedules, see the note to sect. 2.

Sect. 29. In this Actâ

The expression " municipal borough" means anyplace for the time being subject to the Municipal Corporation Acts, or any of them:

The expression " Municipal Corporation Acts" meansâ (a.) As regards England, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same: (1) 6 Vict. c. 18, ss. 85- (2) 45 46 Vict. c. 50, s. 86, post.

The expression " municipal election " meansâ 35 00 Vict.

(a) As regards England, an election of any person to serve the office of c. 33.

councillor, auditor, or assessor of any municipal borough, or of Â Municipal councillor for a ward of a municipal borough. election."

Note. The Municipal Corporation Acts. â The Act of William the Fourth, usually called the Municipal Corporations Act, 1835, 1 and most of the amending Acts, were repealed and replaced by the Municipal Corporations Act, 1882, " which contains a section, 3 providing for the effect of references in other Acts to the repealed provisions of the Act of 1835 and of the amending Acts.

Municipal election. â Assessors are no longer elected for boroughs.

Omitted portions of section. â The omitted portions of the present section refer to Scotland and Ireland.

Sect. 32. Repeal of certain enactments."

Sect. 33. This Act may be cited as the Ballot Act, 1872, and shall? epe Â 1? i Actb continue in force till the thirty-first day of December one thousand eight Â Â., hundred and eighty, and no longer, unless Parliament shall otherwise ' determine; and on the said day the Acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this Act, but such proceeding shall be carried on as if this Act had continued in force.

Note. Continuance of Act. â The Act is at present continued by the Expiring Laws Continuance Act, 1893. 4 (1) 5 6 Will. IV. c. 76. (3) lb. s. 242.

(2) 45 46 Vict. c. 50. (4) 56 57 Vict, c 59.

35 36 Vict, c. 33.

SCHEDULES.

Note. Effect of Schedules. â As to the effect of a disregard of the provisions in the schedules to the Act on the validity of a particular vote, and on the validity of an election, see the notes to sects. 2 and 13 respectively. Sect. 28 provides that the schedules and the notes thereto, and directions therein, shall be construed and have effect as part of the Act.

FIRST SCHEDULE.

Part I.

Rules for Parliamentary Elections.

The Poll. 15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at

such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

**Note. Polling Stations.** â At a municipal election, the duty of providing polling stations falls on the mayor, 1 who is also to furnish each polling station with compartments in which the voters can mark their votes screened from observation.- 17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

**Note. Allotment of Polling Stations.** â In the case of a municipal election the mayor is required to publish a notice as to the allotment of polling places and polling stations. 3 20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part (1) Municipal Corporations Act, (2) lb. Â 4.

1882 (45 46 Vict. c. 50), third (3) lb. Â 2.

thereof as contains the names of the voters allotted to vote at such station. 35: 'Â â ict. He shall keep the official mark secret, and at an interval of not less than seven C. 33. years shall intervene between the use of the same official mark at elections for the same county or borough.

**Note. Provision of Polling Requisites.** â In the case of a municipal election, the duty of providing requisites for the poll under the present rule devolves on the mayor, 1 who is also required to furnish each presiding officer with ballot papers. 2

**Register of Voters.** â As to the meaning of this expression in the case of a municipal election, see rule (34 (Â ).

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

**Note. Appointment of Officers.** â Officers for taking the poll and counting votes are in the case of a municipal election to be appointed by the mayor. 3

**Presiding Officer.** â As to the powers of this officer, see sects. 9, 10; as to his liability for misconduct, see sect. 11. By rule 47, post, the returning officer may himself preside at a polling station if he thinks fit.

**Candidates' Agents.** â As to candidates' agents in the case of a municipal election, see sect. 58 of the Municipal Corporations Act, 1882, 4 and the note to that section.

**Presence of Candidate in Polling Station.** â Candidates in addition to the persons mentioned in this rule are entitled to be present in a polling station." 22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.



23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

Note. Official Mark. As to the duty of the officials in the polling station to deliver properly marked ballot papers to the voters, and as to the effect of absence of the official mark from a ballot paper, see sect. 2, ante, and the note to that section.

Marking Counterfoil. The object of marking the counterfoil is to enable the ballot paper of any voter to be traced if necessary.

(1) Municipal Corporations Act, (4) 45 46 Vict. c. 50, s. 58, post. 1882) (45 46 Vict. c. 50), third (5) Clementson v. Mason (1875), schedule, part III., A 3. L. R. 10 C. P. 209; 44 L. J. C. P.

(2) lb. A 4. 171; 32 L. T. 325; 23 W. Pi. 620.

35 36 Vict. Register of Electors. As to the meaning of this expression in the case of a c. 33. municipal election, see rule 64 (A) A 25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

Note. Marking of Ballot Paper. Directions showing the manner in which a voter is to mark the ballot paper are given in the second schedule; they are to be placarded outside every polling station, and in every compartment of every polling station. As to the effect of irregularities in marking a ballot paper, see the note to sect. 2, ante.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed in this Act, or (if the poll be "taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and

the reason why it is so marked, shall be entered on a list in this Act called " the list of votes-marked by the presiding officer."

The said declaration, in this Act referred to as ' the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

Note. Illiterate Voters. â A case in which the provisions of this rule with l-eo-ard to certain voters unable to read were contravened, and in which the votes of such voters were nevertheless held to be good, l is referred to in the note to sect. 2, ante. A form of declaration of inability to read is given in the second schedule.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as ady other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

Note. Questions to be asked of a Voter. â As to these questions in the case of a municipal election, see sect. 59 of the Municipal Corporations Act, 1882. 2

Register of Electors. â As to the meaning of this expression in the case of a municipal election, see rule 64 (Â ).

Tendered Ballot Papers. â A ballot paper tendered under this rule may (1) Woodward v. Sarsons (Bir- 293; 32 L. T. 867. minqham Municipal Petition) (1875), (2) 45 46 Vict. c. 50, s. 59,

L. R. 10 C. P. 733; 44 L. J. C. P. post.

be counted in the event of the elections petitioned being against, if it 35 36 Vict. appears that the person tendering the paper was the person really entitled to c. o.

vote. If the election is not petitioned against the tendered ballot papers are inoperative. A tendered ballot paper was counted on a scrutiny, though the presiding officer had omitted to endorse it with the applicant's name;' but a tendered ballot paper that the voter had placed in the ballot box, instead of returning it to the presiding officer, was rejected. 2 28. A voter who has inadvertently dealt with this (sic.) ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make â up into separate packets sealed with his own seal and the seals of such agents of the candidates as

desire to affix their seals,â (1.) Each ballot box in use at his station, unopened but with the key attached; and 2.) The unused and spoilt ballot papers, placed together; and 3.) The tendered ballot papers; and (4.) The marked copies of the register of voters, and the counterfoils of the ballot papers; and (5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads " physical incapacity," " Jews," and " unable to read," and the declarations of inability to read; and shall deliver such packets to the returning officer.

Note. Sealed Packets. â It appears that the circumstance that several documents or sets of documents are in some cases mentioned together in the same sub-clause of the rule is not intended to show, in the absence of express words to that effect, that all such documents or sets of documents are to be placed together in one packet. Thus the marked register should be in a packet by itself, and not in the same packet with the counterfoils. 3 30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

#### Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

Note. Candidates' Agents. â As to the appointment of candidates' agents in the case of a municipal election, see sect. 58 of the Municipal Corporations Act, 1882. 4 32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the (1) Stepney Petition (*Isaacson v. Petition*) (No. 1) (1874); L. R. 9 Durant (1886), 4 O'M. H. 34, at C. P. 446; 43 L. J. C. P. 173; 30 p. 43; S. C. 54 L. T. 684. L. T. 299; 22 W. R. 946, per (2) Buckrose Petition (*Sykes v. Brett*, J.

*Mearthur*) (1886), 4 O'M. H. 110, (4) 45 46 Vict. c. 50, s. 58 (6), at p. 115. p 0s t.

(3) See *Stowe v. Joliffe* (Petersfeld 35 36 Vict, close of the poll, and shall give to the agents of the candidates appointed to-c. 33. attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

Note. Presence of Candidates. â It seems that candidates are entitled to be present at the counting, as well as the persons mentioned in the rule. 1 34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.



35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding-(except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the numbers of ballot papers rejected and not counted by him under the several heads ofâ 1. Want of official mark; 2. Voting for more candidates than entitled to; 3. Writing or mark by which voter could be identified; 4. Unmarked or void for uncertainty; and shall on request allow any agents of the candidates, before such report is sent, to copy it.

Note. Rejection of Ballot Papers. â As to defects for which ballot papers ought to be rejected, see sect. 2 and the note to that section ante.

Report to the Clerk of the Crown in Chancery. â In the case of a municipal election, no report is made to this officer. 2 Apparently the reports provided for by this and the succeeding rule ought, in the case of a municipal election, to be made to the town clerk. 3 37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoil ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

(1) See *Clementson v. Mason* (1875), 1882 (45 46 Vict. c. 50), third L. R. 10 C. P. 209; 44 L. J. C. P. schedule, part III., Â 6, post.

171; 32 L. T. 325; 23 W. R. 620. (3) See rule 64, post.

(2) Municipal Corporations Act,  
The Ballot Act, 1872. 291

Note. Municipal Election â As to the report in the case of a municipal 35 36 Vict. election, see the note to rule 36.

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of

its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

**Note. Municipal Election.** â In the case of a municipal election the documents referred to in this rule are to be forwarded to the town clerk. 1 39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's Superior Courts, shall cause them to be destroyed.

**Note. Municipal Election.** â In the case of a municipal election the documents mentioned in this rule are retained by the town clerk in the manner provided by rule 64, post, and by the same rule an order of a county court, or of a tribunal in which a municipal election is questioned, is substituted for an order of the House of Commons or of the High Court.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons or under the order of one of Her Majesty's Superior Courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the House or court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a Court by this rule may be exercised by any judge of such court at chambers.

**Note. Municipal Election.** â With regard to the application of this rule in the case of a municipal election, see the note to rule 39 and the case 2 cited in the note to sect. 3, ante.

**Inspection of Documents.** â For instances in which inspection of documents has been applied for under this and the two succeeding rules, see the cases cited below. 3 41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made (1) See rule 64, post. Petition) (No. 1) (1874), L. R. 9 C. P.

(2) Reg. v. Beardsall (1876), 1 446; 43 L. J. C. P. 173; 30 L. T. Q. B. D. 452; 45 L. J. M. C. 157; 299; 22 W. R. 946; James v. Hen-34 L. T. 660. derson (1874), 43 L. J. C. P. 238; 30 (3) Stoue v. Jolliffe (Petersfield L. T. 527; Reg. v. Beardsall, ubi sup.

35 36 Vict, subject to such conditions as to persons, time, place, and mode of opening or c. 33. inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered

until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

Note. Inspection of Documents. â As to this rule, see the notes to rules 39 and 40.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

Note. Municipal Election. â In the case of a municipal election the documents referred to in this rule are forwarded to the town clerk, and regulations for the inspection of such documents and the fees for the supply of copies of them are to be prescribed by the town council with the consent of the Secretary of State. 1 See also the note to rule 40.

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody, of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be prima facie evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

Note. Municipal Election. â As to the application of this rule in the case of a municipal election, see rule 64, post.

General Provisions. 45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

Note. Declaration of Result. â As to the declaration of the result of an election, see the note to sect. 2, ante.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the (1) See rule 64, post.

returning officer may, in addition to any clerks, appoint competent persons to 35 36 Vict. assist him in counting the votes. c. 33.

Note. Municipal Election. â In the case of a municipal election, officers to assist in counting the votes are appointed by the mayor. 1 49. No person shall be appointed



by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorized to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

Note. Presence of Candidate. A candidate has under the present rule an absolute right to be present at a polling station, and not merely a qualified right to be present for the purpose of undertaking the duties of an agent or of assisting his agent. 2 52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

Note. Candidates' Agents. As to the appointment of candidates' agents in the case of a municipal election, see sect. 58 of the Municipal Corporations Act, 1882. 3 53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

Note. Candidates' Agents. See the note to rule 52.

54. Every returning officer, and every officer, clerk, or agent authorized to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorizing or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done, (1) Municipal Corporations Act, L. R. 10 C. P. 209; 44 L. J. C. P. 1882 (45 46 Vict. c. 50), third 171; 32 L. T. 325; 23 W. R. 620. schedule, part III., A 3, post. (3) 45 46 Vict. c. 50, s. 58 (6), (2) *Clementson v. Mason* (1875), post.

35 36 Vict, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

## 57. In this Actâ

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

Note. Omitted portion of Rule. â The omitted portion of the rule contains definitions inapplicable to municipal elections.

Candidates' Agents. â As to the appointment of candidates' agents in the case of a municipal election, see sect. 58 of the Municipal Corporations Act, 1882. 1

## PART II. Rules for Municipal Elections.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:â (a.) The expression " register of voters " means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station: (â ) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of part one of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely, (a.) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons or of one of Her Majesty's Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court; (.) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's Principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough: (c.) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

Note. Application of Act. â As to the application of the Act to municipal elections, see the note to the heading of the Act, ante, p. 273.

(1) 45 46 Vict. c. 50, s. 58 (6), post.

35 36 Vict. c. 33.

## SECOND SCHEDULE.

Note. Forms. â As to the forms given in this schedule, see sects. 2 and 28, and the notes to those sections.

Note. â The forms contained in this schedule, or forms as nearly resembling â This note is the same as circumstances will admit, shall be used in all cases to which they contained in the refer and are applicable, and when so used shall be sufficient in law. copies of The Act.

FORM OF BALLOT PAPER. Form of Front of Ballot Paper.

BROWN (John Brown, of 52, George St., Bristol, merchant.)

JONES (William David Jones, of High Elms, Wilts, Esq.)

MEETON (Hon. George Travis, commonly called

Viscount Merton, of Swanworth,

Berks.)

OJO.

SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)

Counterfoil No.

Note. â The counterfoil is to have a number to correspond with that on the back of the ballot paper.

Form of Back of Ballot Paper.

Election for county or borough, or ward.

Note. â The number on the ballot paper is to correspond with that in the This note is counterfoil. contained in the

Queens Printers copies of the Act.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

35 30 Vict.

c. 33. Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.

The voter may vote for candidate

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show r the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanour, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Tin's note is Note. â These directions shall be illustrated by examples of the ballot paper, contained in Vie Queen's Printers' coj ics of the Act. Form of Statutory Declaration of Secrecy.



I solemnly promise and declare, That I will not at this election for do anything forbidden by section four of The Ballot Act, 1872, which has been read to me. 771.1 note is 2fote. â The section must be read to the declarant by the person taking the contained in trie,... Queen' Printer declaration. cup id of Hie Act.

Form of Declaration of Inability to read.

I, A. B., of, being numbered on the Register of Voters for the county or borough of, do hereby declare that I am unable to read.

A. B., his mark, day of I, the undersigned, being the presiding officer for the polling station for the county or borough of, do hereby certify, that the above declaration, having been first read to the above-named A. B., was-signed by him in my presence with his mark.

Signed. CD., Presiding officer for polling station.

for the county or borough of day of 43 46 Vict.

THE MUNICIPAL COPOKATIONS ACT, 1882.

45 4G Vict. c. 50.

An Act for consolidating, tcith amendments, enactments relating to Municipal Corporations in England and Wales.

18th August, 1882.

Note. Application of the Act. â By sub-sect. (4) of sect. 48 of the Local Government Act, 1894, 1 the provisions of the present Act with respect to certain subjects in that sub-section enumerated, and sect. 56 of the present Act, are, subject to the provisions of that Act and subject to adaptations, alterations, and exceptions to be made by rules framed by the Local Government Board under that Act, rendered applicable in the case of guardians, district councillors of a county district not a borough, members of the Local Board of Woolwich, and members of a vestry under the Metropolis Management Acts.

Sub-sect. (3) of the same section similarly renders sects. 74 and 75, anil Part IV. of the present Act as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 2 applicable, subject to modifications, to every election regulated by rules framed under the Local Government Act, 1894, " in like manner as in the case of a municipal election." Sects. 74 and 75, and Part IV. of the Act are therefore applied to the elections of members of the various authorities above referred to; 3 and also to the election of parish councillors, 4 and of auditors required to be elected by the Metropolis Management Acts, 5 and, apparently, to some extent at all events, to every poll consequent on a parish meeting. 6

The same sub-section also renders the Ballot Act, 1872 7 subject to modifications, applicable to the same elections " in like manner as in the case of a municipal election." The provisions of the present Act relating to the application of the Ballot Act to municipal elections will therefore to some extent apply to the above mentioned elections, and to a poll consequent on a parish meeting.

Only such portions of the Act as contain provisions which appear to be thus applied by the Local Government Act, 1894, or as are necessary to render such provisions intelligible, are set out below. It is, however, almost always a matter of some difficulty to determine how much of an Act relates to a given subject; and it is very probable

that portions of the Act have been included in the present work that ought to have been omitted, and vice versa.

The Act has necessarily been annotated almost exclusively with reference to municipal elections and the office of borough councillor.

Previous Legislation. — The present Act, though making certain amendments in the law, is mainly a consolidation Act, repealing and replacing the provisions of the Municipal Corporations Act, 1835, 8 and numerous amending Acts; decisions on the earlier Acts remain accordingly to a large extent authorities on the interpretation of the present Act.

(1) 56 57 Vict. c. 73, s. 48 (4). (5) lb. s. 31 (1).

(2) 47 48 Vict. c. 70, post. (6) lb. s. 48 (8 (3) 56 57 Vict. c. 73, ss. 20 (5), (7) 35 36 Vict. c. 33. 23 (5), 24 (4), 30, 31 (1). (8) 5 6 Will. IV. c. 76.

(4) lb. s. 3 (6).

45 — 46 Vict.

c. 50. PART I.

Preliminary. Interpretation Sect. 7. (1.) In this Act — and construction. "Borough" means, unless a contrary intention appears, a city or town to which this Act applies:

"Municipal corporation" means the body corporate constituted by the incorporation of the inhabitants of a borough:

"Municipal Corporations Act, 1835," means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September, one thousand eight hundred and thirty-five:

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act:

"Burgess" includes citizen:

"Corporate seal" means the common seal of a municipal corporation:

"Corporate office" means the office of mayor, alderman, councillor, elective auditor, or revising assessor:

"Corporate land" means land belonging to or held in trust for a municipal corporation:

"Municipal election" means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large:

"Parliamentary election" means an election of a member to serve in Parliament:

"Parish" means any place for which a separate poor rate is or can be made:

"Overseers" means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers:

"County" does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county:

"Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

"Person" includes a body of persons corporate or unincorporate:

"Treasury" means the Commissioners of Her Majesty's Treasury:

"The Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"High Court" means Her Majesty's High Court of Justice:

"Justice " means one of Her Majesty's justices of the peace:

"Borough civil court" means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court:

"Bank of England " means the governor and company of the Bank of England:

"Schedule" means schedule to this Act, and "Part" means part of this Act: â

"Writing" includes print, and " written " includes printed.

(2.) Words in this Act referring to a borough municipal corporation, authority, officer, or office, shall be construed di tributivt-ly as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4.) The schedules shall be read and have effect as if they were part of this Act.

Note. Definitions. â Certain further definitions applicable to the interpretation of Part IV. of the Act are contained in sect. 77.

45; 46 Vict. c. 50.

Constitution and Government of Borough. Sect. 34.â (1.) Every qualified person elected to a corporate office, Obligation to unless exempt under this section or otherwise by law, either shall accept ' J 06 or the office by making and subscribing the declaration required by this Act within five days after notice of election, or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by byelaw determine.

(2.) If there is no byelaw determining fines, the fue, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty five pounds, and in case of a mayor fifty pounds. (3.) The persons exempt under this section areâ (a.) Any person disabled by lunacy or imbecility of mind, or by Supplemental deafness, blindness, or other permanent infirmity of body; and and exceptional (6.) Any person who, being above the age of sixty-five years, or having p within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election. (4.) A fine payable under this section shall be recoverable summarily.

Note. Acceptance of Office. â As to the declaration of acceptance of office, see sect. 35.

As to the computation of the five days after notice of election, see sect. 230.

Mere casual information is not notice of election within the meaning of the present section; to incur a penalty for non-acceptance of office, the person elected must have been present at the declaration of the result of the election or have received notice of it from some official source. 1

Non-acceptance of office creates a casual vacancy: see sect. 40 (3).

Exemptions from Compulsory Acceptance of Office. â Certain further exemptions from compulsory acceptance of office are contained in sects. 36 (3) and 253, post. In addition to the exemptions provided for by the present Act, the following statutory exemptions may be mentioned:â Commissioners and officers of customs, 2 Inland



Revenue Commissioners and persons in their employ, 3 and post office officials 4 are exempt from compulsory service in any public office. Dentists registered under the Dentists Act, 1878, 5 medical practitioners registered under the Medical Act, 1858, and registrars of births and deaths and of marriages, 7 are exempt from compulsory service in any corporate office. Factory inspectors are exempt from compulsory service in any municipal office. 8 And persons in the Army reserve are exempt from compulsory service in any borough office. 9

Recovery of Fine. â As to the recovery of a fine incurred under the present section, see sec. 219.

Sect. 35. A person elected to a corporate office shall not, until he has Declaration on made and subscribed before two members of the council, or the town clerk, acceptance of a declaration as in the Eighth Schedule, act in the office except in office-administering that declaration.

(1) Reg. v. Prece (1843), 5 Q. B. s. 12.

94; D. M. 156; 12 L. J. Q. B. 335; (5) 41 42 Vict. c. 33, s. 30.

7 Jur. 896, decided under 5 6 (6) 21 22 Vict. c. 90, s. 35.

Will. IV. c. 76, s. 31, now repealed. (7) 7 Will. IV. and 1 Vict. c. 22, (2) 39 40 Vict. c. 36, s. 9. s. 18 (3) 53 54 Vict. c. 21, s. 8. (8) 41 Vict. c. 16, s. 67.

(4) 7 Will. IV. and 1 Vict. c. 33, (9) 45 46 Vict. c. 48, s. 7.

45 46 Vict. Note. Declaration of Acceptance of Office. â Sect. 41 provides a penalty c. 50. for acting before having made the declaration. As to the authority of the town clerk or members of the council to receive the declaration, see sect. 239.

Fine on resigna- Sect. 36.â (1.) A person elected to a corporate office may at any time, tion, c. by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof.

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

Note. Resignation. â The provisions of the section as to the resignation of office are inapplicable to guardians and rural district councillors, see sect. 48 (4) of the Local Government Act, 1894, ante.

An attempt to resign office under the present section is ineffectual, if the fine is not paid, and the resignation is not accepted. 1 The resignation, however, is completed by the delivery of the writing to the town clerk and payment of the fine, and cannot afterwards be withdrawn, even with the consent of the council. 2 As to resignation by a person who is disqualified for office, see the cases cited below. 3

Re-eligibility of Sect. 37. A person ceasing to hold a corporate office shall, unless office holders disqualified to hold the office, be re-eligible.

Filling of casual Sect. 40â (1.) On a casual vacancy in a corporate office, an election vacancies. shall be held by the same persons and in the same manner as an

election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

Note. Casual Vacancy â The time within which a casual vacancy is to be filled is prescribed by sect. 66, post.

Where a casual vacancy in an office to which the present section is applied by the Local Government Act, 1894, occurs within six months before the ordinary day of retirement from the office, a special election to fill the vacancy is not to be held; but the vacancy is to be filled at the next ordinary election. 4 (1) Fulcherv. Saunders (1885), 49 2 Q. B. 55; 36 L. J. Q. B. 18; 15 J. P. 424. L. T. 242; 15 W. R. 105; 7 B. S.

(2) Reg. v. Wigan (Mayor, Â c.) 922; Hardwick v. Brown (1873), (1885), 14 Q. B. D. 908; 54 L. J. Q. B. L. R. 8 C. P. 406; 28 L. T. 502; 338; 52 L. T. 435; 33 W. R. 547; 21 W. R. 639.

49 J. P. 372. (4) 56 57 Vict. c. 73, s. 48 (4).

(3) Reg. v. Blizzard (1866) L. R.

The present Act makes no provision for filling a casual vacancy at an ordinary 4j 40 ict. election; and it may be doubted whether elections to fill a casual vacancy and â 50.

ordinary vacancies among the councillors of a borough can be properly held simultaneously unless they are kept completely distinct. At all events if a casual vacancy and ordinary vacancies among the councillors of a borough were filled at the same election, and the electors were not warned that one of the vacancies was a casual vacancy and enabled to record their votes so as to show whether they wished a candidate to fill the casual vacancy, or an ordinary vacancy, the whole election might be set aside. 1

Sect. 41.â (1.) If any person acts in a corporate office without having J? made the declaration by this Act required, or without being qualified at cting in offit. e. the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action.

Note. Declaration Accepting Office. â As to this declaration, see sect. 35, ante.

Application of Section. â Sub-section (1) will apparently be applicable, subject to any modification that may be made, to persons elected to any of the offices referred to in sect. 48 (4) of the Local Government Act, 1894, as regards acting without! making the required declaration, but not otherwise. The omitted portion of the section is clearly inapplicable to persons elected to such offices.

Recovery of Fine. â As to the recovery of a fine under this section, see sect. 224.

### PAKT III.

#### Preparations for and Procedure at Elections.

Sect. 56.â (1.) If the number of valid nominations exceeds that of the Belation of nominaii "" election.

vacancies, the councillors shall be elected from among the persons no nominated.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be reelected to make up the required number.

(4.) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected.

Note. Application of Section. â The present section is expressly applied by sect. 48 (4) of the Local Government Act, 1894, subject to modifications, in the case of guardians, district councillors of a county district not a borough, members of the local board of Woolwich, and members of a metropolitan vestry under the Metropolis Management Acts.

Retiring Councillor. â As to the effect of the provision as to the continuance in office of retiring councillors where one of the retiring councillors has become disqualified, see the case cited below. 2 (1) See *Rowley v. Reg.* (1844), 6 34 L. T. 444; 24 W. R. 363.

Q. B. 668; 14 L. J. Q. B. 62; 8 Jur. (2) *Reg. v. Welchpool* (Mayor), 1170; *Reg. v. Rippon* (1876), 1 (1876), 35 L. T. 594. q. B. D. 217; 45 L. J. Q. B. 188; 45 46 Vict. Sect. 58.â (1.) If an election of councillors is contested, the poll shall, c. 50. as far as circumstances admit, be conducted as the poll at a contested par-

Mode of con- liamentary election is by the Ballot Act, 1872, directed to be conducted, ducting poll at and, subject to the modifications expressed in Fart III. of the Third contested elec- Schedule, and to the other provisions of this Act, the provisions of the 35 36 Vict. Ballot Act, 1872, relating to a poll at a parliamentary election (including c 33. the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

(3.) The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day.

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock.

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.



(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorise the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election.

Note. Application of the Section. â The present section has no direct application under the Local Government Act, 1894; but by section 48 of that Act, the Ballot Act, 1872, 1 is, subject to modifications, rendered applicable to every election regulated by rules framed under that Act, and also to every poll consequent on a parish meeting, "in like manner as in the case of a municipal election." The present section, so far as it relates to the application of the Ballot Act in the case of a municipal election, is therefore indirectly applied by the Local Government Act, 1894, in the cases above mentioned.

No question can arise as to the applicability of sub-sect. (2), under the Local Government Act, 1894; inasmuch as that Act contains express provisions to the like effect. 2

Sub-sects. (3) and (4) are impliedly repealed by the Elections (Hours of Poll) Act, 1885, 3 which now prescribes the period during which the poll at a municipal election is to be kept open. That Act is to apply to elections to metropolitan vestries under the Metropolis Management Acts. 4 But in other cases the time during which a poll is to be kept open, for the purposes of the Local Government Act, 1894, is to be determined in accordance with sect. 48 (2) (z'u.) of that Act.

Whether sub-sect. (5) will apply in the case of an election under the Local Government Act, 1894, or of a poll consequent on a parish meeting seems doubtful.

Sub-sect. (6), which directly relates to the Ballot Act, will no doubt apply in such cases.

Appointment of Agents. â The effect of the provision in sub-sect. (6), that "nothing in the Ballot Act, 1872, as applied by this Act shall be deemed to authorize the appointment of any agents of a candidate at a municipal election" is difficult to perceive, since the latter part of the section practically authorizes the appointment of such agents. The portions of the Ballot Act, (1) 35 36 Vict. c. 33. 31 (1).

(2) 56 57 Vict. c. 73, ss. 2 (2), (3) 48 Vict. c. 10.

20 (4), 23 (4), and see ss. 24 (4), 30, (4) 56 57 Vict. c. 73, s. 31 (1).

1872, applicable to municipal elections, contain various provisions as to 45 46 ict. candidates' agents. 1

As to the responsibility of a candidate for the acts of persons acting as his agents, whether specially appointed as such or not, see the note to sect. 100.

Sect. 59.â (1.) At an election of councillors, the presiding officer shall, Q 53 ' : U if required by two burgesses, or by a candidate or his agent, put to any re p person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions, or either of them: (a.) Are you the person enrolled in the burgess or ward J roll now in force for this borough or ward as follows read the whole entry from the roll?

(6.) Have you already voted at the present election add, in case of an election for several wards, in this or any other ward?

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

Note. Application of section. â Whether this section can be regarded as relating to the application of the Ballot Act, 1872, to municipal elections, so as to be applicable in the cases in which that Act is applied by sect. 48 (3) of the Local Government Act, 1894, seems doubtful. 2

Sect. 66. â (1.) On a casual vacancy in a corporate office, the election Time for filling shall be held within fourteen days after notice in writing of the vacancy casual vacancies, has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

Note. Casual vacancies. â As to the filling of casual vacancies, see sect. 40.

As to the computation of time, see sect. 230.

Sect. 74.â (1.) If any person forges or fraudently defaces or fraudu-Offences in lently destroys any nomination paper, or delivers to the town clerk any relation to forged nomination paper, knowing it to be forged, he shall be guilty of a pÂ perst 1U " misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

Note. Application of Section. â This and the next section are, by sect. 48 (3) of the Local Government Act, 1894, expressly applied, subject to modifications, to all elections regulated by rules framed under that Act.

Sect. 75.â (1.) If a mayor or revising assessor neglects or refuses to offences in revise a parish burgess list, or a mayor or alderman neglects or refuses to relation to lists conduct or declare an election, as required by this Act, he shall for every and elections. such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

( 2-) If â (a.) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act; or (1) 35 36 Vict. c. 33, s. 4, and (2) See the note to the preceding first schedule, rules 21, 29, 32, 33, section. 34, 36, 51, 53, 54, 55, ante.

45 46 Vict. (.) A town clerk neglects or refuses to receive, print, and publish, a Â 'â 50. parish burgess list or list of claimants or respondents, as required by this Act; or (c.) An overseer or town clerk refuses to allow any such list to be inspected by a person having a rijyht thereto; he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action.

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

Note. Application of Section. â See the note to sect. 74.

Misconduct of Returning Officer, Â c. â As to penalties on returning officers and other officials for misconduct connected with elections, and as to their liability to actions for breach of duty, see sect. 11 of the Ballot Act, 1872," and the note to that section, ante.

#### PART IV.

##### Corrupt Practices and Election Petitions.

Note. Corruption at Elections and Election Petitions. â The enactments contained in the present part, which is a re-enactment with but very slight modifications of the Corrupt Practices (Municipal Elections) Act, 1872, 2 and in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 3 by which this part is amended, consist in the main of an adaptation to municipal elections, with suitable modifications, of corresponding enactments relating to parliamentary elections. A few observations on the latter enactments will therefore not be out of place.

Formerly, questions as to the validity of parliamentary elections did not come before courts of law, but were taken cognizance of by the House of Commons exclusively. Originally such questions were dealt with by the whole House, and were usually decided in practice, if not in theory, on political grounds. Between 1770, when the first statute dealing with the subject was passed, 4 and 1868, the jurisdiction of the House over election petitions was delegated to select committees by whom such petitions were heard and determined in a quasi-judicial manner. Many of the decisions of such committees have been reported, and are still, though to a great extent superseded by more recent decisions and by statutory provisions, treated as authorities on election law.

Now, under the Parliamentary Elections Act, 1868, 5 as amended in certain details by subsequent legislation, parliamentary election petitions in England are presented in the High Court, and are tried by an election court consisting of two judges 6 sitting without a jury. There is no appeal from the judges' decisions; but questions of law may be reserved by them as in the case of a trial *à nisiprius*, or, when the case raised by the petition admits, the petition may be stated as a special case. Points of law and special cases thus reserved or stated are decided by a divisional court of the Queen's Bench Division, exercising the jurisdiction formerly vested in the Court of Common Pleas and from the decisions of the Queen's Bench Division, an appeal lies, with leave, to the Court of Appeal. 7 (1) 35 36 Vict. c. 33, s. 11. Corrupt Practices Act, 1879 (42 43 (2) 35 36 Vict. c. 60, repealed Vict. c. 75), s. 2. Before the passing by the present Act. of that Act petitions were tried by (3) 47 48 Vict. c. 70, post. one judge only.

(4) 10 Geo. III., c. 16, commonly (7) Parliamentary Elections Act, called "Grenville's Act," now re 1868 (31 32 Vict. c. 125), ss. 11 repealed. (16) 12; Supreme Court of Judicature Act, 1881 (44 45 Vict. c. 68) (6) Parliamentary Elections and s. 14; and see the note to s. 93, post

Petitions in Scotland and Ireland are dealt with by the superior courts in 45 46 Vict. those countries in a corresponding manner. c- 5U-



The reports of the decisions of the judges before whom election petitions have been tried, and of the Courts by whom points of law, special cases and interlocutory applications connected with such petitions have been decided, now form a body of case law of considerable bulk, the greater part of which applies to municipal as well as to parliamentary elections.

By far the greater number of parliamentary petitions are based on allegations that the election in question is vitiated by acts of corruption or other offences against election law; and the decisions of the judges on such petitions deal for the most part with questions as to how far the evidence before them establishes that such offences have been committed, or that the candidate whose election is questioned is responsible for such offences.

Application of Part IV. — As to the application, under the Local Government Act, 1894, of the present part of the Act to elections of parish councillors and others, see the note to the heading of the Act, ante.

At present, Part IV. of the Act as amended by the Municipal Election (Corrupt and Illegal Practices) Act, 1884, is applied with modifications to various non-municipal elections by sect. 36 of the last mentioned Act. 1 That section, except so far as it relates to schoolboards, appears, however, to be impliedly repealed by the Local Government Act, 1894.

#### Corrupt Practices.

##### Sect. 77. In this Part

"Bribery," "treating," "undue influence," and "personation," include Definitions. respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections:

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

"Voter" means a burgess or a person who votes or claims to vote at a municipal election:

"Election court" means a court constituted under this part for the trial of an election petition:

"Municipal election petition" or "election petition" means a petition under this part complaining of an undue municipal election:

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868:

"Prescribed" means prescribed by general rules made under this part:

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates.

Note. Repeal. — The omitted portions of the present section contained definitions of the expressions "corrupt practice" and "canvasser." They are repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 2 which contains an extended definition of "corrupt practice" 3 and repeals the sections of the present Act relating to canvassers.

Definitions. â Definitions of certain expressions employed in the present Act are contained in sect. 7, ante.

Briber;, Â c. â The enactments defining bribery, treating, undue influence, and personation applicable to municipal elections, are set out, post.

(1) 47 48 Vict. c. 70, s. 36. (3) lb. s. 2.

(2) lb. s. 38. (4) lb. third schedule, part. I.

Appendix I.

45 46 Vict. c. 50.

Avoidance of election for general corruption.

Sect. 81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of parliament avoid a parliamentary election.

Note. Avoidance of Election for General Corruption. â As to the principle of the common law under which an election may be set aside for general corruption, c, the following observations of Blackburn, J., may be quoted:â " There is a principle. that if there has been general corruption, although it does not appear to have been done by any agent,â I mean either general corruption, preventing the election representing what it ought to represent, that is, the feeling of the constituents; or general intimidation, so that you may say it is evident that the election is not a free one,â in that case, although it is not brought home to the agent, the election would not be good by the common law of Parliament. It must, however, be very difficult in such a case to prove, and very difficult to be able to say whether or not a case is of sufficient magnitude to amount to that."

Reference may also be made to the judgment in *Woodward v. Sarsons*, 2 from which extracts are given in the note to sect. 13 of the Ballot Act, 1872, ante, and to the cases cited below. 3

Striking i ft" votes. Sect. 85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

Note. Scrutiny. â With regard to a scrutiny, see the note to sect. 100. The Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 4 provides for striking off the votes of persons guilty of corrupt practices or of certain other offences. As to the construction of that enactment, and of the present section, reference may be made to the case cited below. 4

Personation. Sect. 86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

Note. Personation. â The enactments at present in force dealing with the matters referred to appear to be sects. 85-88 of the Parliamentary Registration Act, 1843. s See also sects. 15 and 24 of the Ballot Act, 1872."

(1) *Stafford Petition (Chawner v. Meller)* (1869), 1 O'M. H. 228, at p. 234; S. C. 21 L. T. 210.

(2) *Woodward v. Sarsons (Birmingham Municipal Petition)* (1875), L. R. 10 C. P. 733; 44 L. J. C. P. 293; 32 L. T. 867.

(3) Lichfield Petition (*Anson v. Dyott*) (1869), 1 O'M. H. 22; 20 L. T. 11; Bradford Petition (*Storey v. Forster*) (1869), 1 O'M. H. 35; 19 L. T. 723; Beverley Petition (*Hindv. Edwards*) (1869), 1 O'M. H. 143; 20 L. T. 792; Stafford Petition (*Chawner v. Meller*) (1869), 1 O'M. H. 228; 21 L. T. 210; Nottingham Petition (*Toer v. Seely*) (1869), 1 O'M. H. 245; Drogheda Petition (*Mcclintock v. Whitworth*) (1869), 1 O'M. H. 252; Galway Petition (*Trench v. Nolan*) (1872), 2 O'M.

H. 46; Dudley Petition (*Hingley v. Sheridan*) (1874), 2 O'M. H. 115; North Durham Petition (*Burdon v. Bell*) (1874), 2 O'M. H. 152; 31 L. T. 383; Thornkury Petition (*Ackers v. Howard*) (1886), 4 O'M. H. 65; Ipswich Petition (*Packard v. Collings*) (1886), 4 O'M. H. 70; 54 L. T. 619.

(4) 47 48 Vict. c. 70, s. 22, post.

(5) *Malcolm v. Ingram* (Boston Petition) (1874), L. R. 9 C. P. 610; 43 L. J. C. P. 331; 31 L. T. 331, decided under the Ballot Act, 1872 (35 36 Vict. c. 33), s. 25.

(6) 6 Vict. c. 18, ss. 85-88. These sections are set out, ante, pp. 283, 284.

(7) 35 36 Vict. c. 33, ss. 15, 24, ante.

45 46 Vict. Election Petitions. c- J Â-

Sect. 87.â (1.) A municipal election may be questioned by an election Power to ques-petition on tli 0 groundâ election bv l (a.) That the election was as to the borough or ward wholly avoided by p e t i o n .

general bribery, treating, undue iulluence, or personation; or (6.) That the election was avoided by corrupt practices or offences against this part committed at the election; or (c.) That the person whose election is questioned was at the time of the election disqualified; or (d.) That he was not duly elected by a majority of lawful votes. (2.) A municipal election shall not be questioned on any of those grounds â except by an election petition.

Note. Petition. â The Municipal Elections (Corrupt and Illegal Practices) Act, 1884, extends the grounds upon which a municipal election may be questioned by petition. 1

The interpretation put by the Court upon the section of the Corrupt Practices (Municipal Elections) Act, 1872, 2 of which this section is a re-enactment in slightly changed language, and upon the present section, has been very wide; and it is accordingly only in very exceptional cases that a petition â does not form the proper and only meaas of questioning a municipal election. Thus it was held under the earlier enactment that an election might be questioned by petition on the ground that the notice of election, required by the enactment 3 corresponding to sect. 54 of the present Act, was misleading, and had led to a candidate's nomination paper being delivered too late. Again, where the mayor of a borough was a candidate, and, acting as returning â officer, gave a casting vote for himself, and declared himself elected, it was held, under the present section, that the election could not be questioned â except by petition. 5 See also the cases cited below. 6

A petition may be presented against some only of a number of successful candidates upon grounds that equally affect the election of all such candidates, and upon such a petition the candidates petitioned against may be unseated. 7

Where a petitioning candidate is seated on petition, a fresh petition cannot â be brought for the purpose of unseating him. 8 Under sect. 93 (10), however, provision



is made for the hearing of countercharges against a candidate for whom the seat is claimed, at the trial of the original petition.

Sect. 88. (1.) An election petition may be presented either by four or Presentation of more persons who voted or had a right to vote at the election, or by a Petitioner-person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall (1) 47 48 Vict. c. 70, ss. 8, 18, (6) Beg. v. Welchpool Mayor, f-c.) post. (1876), 35 L. T. 594; Budge v.

(2) 35 36 Vict. c. 60, s. 12, Andrews (1878), 3 C. P. D. 510; 47 repealed by the present Act. L. J. C. P. 586; 39 L. T. 166; Broun (3) 38 39 Vict. c. 40, s. 1 (1), v. Bean (1889), 53 J. P. 167. repealed by the present Act. (7) Line v. Warren (1885), 14 (4) Howes v. Turner (1876), 1 Q. B. D. 548; 54 L. J. Q. B. 291; C. P. D. 670; 45 L. J. C. P. 550; 53 L. T. 446; 49 J. P. 516.

35 L. T. 58. (8) Way good v. James Taunton (5) Beg. v. Morton (1891), L. R. Petition (1869), L. R. 4 C. P. 361; 1892 1 Q. B. 39; 61 L. J. Q. B. 38 L. J. C. P. 195; S. C. nom. Wey-39; 65 L. T. 611; 40 W. R. 109; good v. James, 17 W. R. 824.

06 J. P. 105.

45 46 Vict. send a copy thereof to the town clerk, who shall forthwith publish it in c. 50. the borough.

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

Note. Respondents. In a case where A. and B. were candidates for the office of town councillor, A. had the majority of votes, but, being disqualified, refused to serve, and B. claimed the seat, made the declaration accepting office, and acted on several occasions; subsequently a petition was presented to which both A. and B. were made respondents, and the Court refused to strike B.'s name off the petition though he had served notice, under the enactment! corresponding to sect. 97 (1), post, of his intention not to oppose the petition, holding that a person who claims to have been elected, and acts as if he had been elected, was properly made a respondent under the enactment s corresponding to the present section. 3

An unsuccessful candidate cannot properly be made a respondent. 4

The returning officer should not be made respondent merely on the ground that the petition calls in question a decision on his part given bond fide in the exercise of the jurisdiction vested in him. 5

Meaning of "prescribed." This term is defined by sect. 77.

Time for presenting Petition. â The time within which a petition may be presented on the ground of illegal practices is limited by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 6 As to the computation of time, see sect. 230. As to the scope of the inquiry where a petition is presented after the lapse of the twenty-one days specifically alleging a corrupt payment or promise, see the case cited below. 7

Security for costs. Sect. 89.â (1.) At the time of presenting an election petition, or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a Judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security and a copy of the petition.

(4.) Within five days after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(1) 35 36 Vict. c. 60, s. 18, now (5) *Harmon v. Park* (No. 1) repealed. (1880) 6 Q. B. D. 323; 50 L. J. Q. B.

(2) *lb.*, s. 13, now repealed. 227; 44 L. T. 81; 29 W. R. 750; (3) *Yates v. Leach* (1874), L. R. 9 45 J. P. 436.

C. P. 605; 43 L. J. C. P. 377; 30 (6) 47 48 Vict. c. 70, s. 25,  
L. T. 790. post.

(4) *Lovering v. Dawson Maiden* (7) *Kidderminster Petition* (*Young v. Leach Municipal Petition*) (No. 1) *Johns v. Grant* 1(1874), 2 O'M. H. (1875), L. R. 10 C. P. 711; 44 170.

L. J. C. P. 321; 32 L. T. 819.

(5.) An objection to a recognisance shall be decided in the prescribed manner. c' (6.) If the objection is allowed, the petitioner may, within a farther prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

Note. Times for proceedings. â The Court has no jurisdiction to extend the periods limited for the various proceedings required of the petitioner by the present section. If, therefore, such proceedings are not taken within the periods so limited, the petition will fail. 1 As to the computation of time, see ect. 230.

Security for Costs. â A recognisance under the present section should be entered into by persons other than the petitioners, but the circumstance that the recognisance is entered into by the petitioners, though affording ground for objection to the sufficiency of the security, will not be fatal to the petition. 2

It seems that security to a greater amount than £ 500 cannot be required, though the petition may be against the election of two or more persons.

Meaning of "prescribed." — this term is defined by sect. 77.

Sect. 90. On the expiration of the time limited for making objections, Petition at issue. or, after objection made on the objection being disallowed or removed, whichever last happens, the petition shall be at issue. —

Sect. 91. (1.) The prescribed officer shall as soon as may be make " f a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this part the petition shall be deemed to be a separate petition against each respondent.

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

Note. — Meaning of "prescribed." — This term is defined by sect. 77. Petition against several Candidates. — With regard to the interpretation of sub-section (3), see the cases cited below. 8

Sect. 92. (1.) An election petition shall be tried by an election court JggjJJij consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years' standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, under than that of recorder.

(1) Williams v. Tenby (Mayor tion); Pegler v. Gurney (South-(1879), 5 C. P. D. 135; 49 L. J. C. P. arnpton Petition) (1869), L. R. 4 325; 42 L. T. 187; 28 W. R. 616; C. P. 235; 38 L. J. C. P. 161; 17 44 J. P. 348. W. R. 320.

(2) Pease v. Norwood (Hull Peti (3) lb.

45 46 Vict. (3.) A barrister shall not be qualified to constitute an election court c. 50. for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions.

(5.) If a commissioner to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.



(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

Note. Repeal. The omitted portion of sub-section (4) is repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 1

Election Court. The Parliamentary Elections Act, 1868, 2 provides that on the trial of a parliamentary election petition under that Act "the judge shall, subject to the provisions of" that Act, "have the same powers, jurisdiction, and authority as a judge of one of the superior courts and as a judge of assize and nisi prius, and the court held by him shall be a court of record." It has been expressly held that an election court for the trial of a municipal election petition is a court of record. 3

Trial of election petition. Sect. 93. (1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.

(2.) The place of trial shall be within the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it undesirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows: (a.) Whether any corrupt practice or offence against this part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence; (h.) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this part; (c.) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, and (1) 47 48 Vict. c. 70, s. 33, (3) Reg. v. Maidenhead (Mayor, post. 4c.) (1882), 9 Q. B. D. 494; 51 (2) 31 32 Vict, c. 125, s. 29. L. J. Q. B. 444; 46 J. P. 724.

account of which ought, in the judgment of the election court, to be 45 46 Vict, submitted to the High Court. c. 50.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be

stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

Note. Trial of Petition. â Further provisions with regard to the trial of a municipal election petition are contained in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 1

Meaning of " prescribed." â This term is defined by sect. 77.

Place of Trial. â As to what amount to " special circumstances " within the meaning of sub-section (2), see the cases cited below. 2

Report of the Election Court. â Further provisions as to the matters upon which the election court is required to report, are contained in sect. 60 of the Corrupt and Illegal Practices Prevention Act, 1883, 3 and in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 4

Under the last-mentioned Act, persons reported by an election court to have been guilty of corrupt practices or of certain other offences become subject to various disqualifications, 5 and by the above-mentioned section of the Act of 1883, 6 a report of an election court reporting persons to have been guilty of any corrupt or illegal practice is to be laid before the attorney-general with a view to his instituting or directing a prosecution.

(1) 47 48 Vict. c. 70, ss. 27, 28, (3) 46 47 Vict. c. 51, s. 60, post. post, applied to municipal petitions (2) *Collins v. Price* (Tewkesbury by the Municipal Elections (Corrupt Petition) (1880), 5 C. P. D. 544; 49 and Illegal Practices) Act, 1884 L. J. C. P. 685; *Arch v. Bentinck* (47 48 Vict. c. 70), s. 30. (1887), 18 Q. B. D. 548; 56 L. J.

Q. B. (4) 47 48 Vict. c. 70, ss. 3 (2), 458; 56 L. T. 360; 35 W. R. 476; 8 (2), 18, 19, 26 (7).

Lawson v. Chester-Master (Cirencester (5) lb. ss. 3, 8, 23, and third Petition) (1893), L. R. 1893 1 Q. B. Bchedule, part II. 245; 62 L. J. Q. B. 231; 68 L. T. (6) 46 47 Vict. c. 51, s. 60.

60; 41 W. R. 221; 57 J. P. 806.

45 46 Vict. Ceding of Unsuccessful Candidates. â As to the principles which the Court is c. 50. to observe with regard to declaring any person to have been elected in the room of any other person declared not to be elected, see sect. 100 (3) and the note to that section.

Special Case. â As to the statement of a special case where one party to the petition does not appear, see the case cited below. 1

Appeal to Court of Appeal. â An appeal to the Court of Appeal lies, with leave, but not without, from the decision of the Divisional Court on a special case stated under sub-sect. (7), a point of law reserved under sub-sect. (8). or on an interlocutory application. 2

Recriminatory Case. â A recriminatory case can only be raised where the seat is claimed; whether such a case can be proceeded with where the petition claims the seat but the claim is abandoned at the trial is doubtful. 3

Trial after Respondent ceases to hold Office. â As to the trial in such a case, see sect. 97.

Witnesses. Sect. 94.â (1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury.

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

Note. Repeal. â The omitted portions of the section are repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 4 and are replaced by sect. 30 of that Act and the enactments by that section rendered applicable to municipal elections.

Costs of Witnesses. â As to the costs of a petition and the expenses of an election court, see sects. 98 and 101, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, sects. 29 and 32. 5 . Meaning of "prescribed." â This term is defined by sect. 77.



Withdrawal of Sect. 95.â (1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place.

(1) *Burgoyne v. Collins* (1882), 46 582; and see *Shaw v. Reckitt* (Pontr-J. P. 710. fract Petition) (1893), L. R. 1893 (2) Supreme Court of Judicature 2 Q. B. 59; 62 L. J. Q. B. 375; 69 Act, 1881 (44 45 Vict. c. 68), s. 14; L. T. 327; 41 W. R. 497. *Beresford Hope v. Sandhurst* (1889), (3) *Gravesend- Petition* (Truscott 23 Q. B. D. 79; 58 L. J. Q. B. 316; v. *Sevan* (1880), 3 O'M. H. 81; 44 61 L. T. 150; 37 W. R. 548; 53 L. T. 64. J. P. 805; *Unuinx. McMullen* (1891), (4) 47 48 Vict. c. 70, s. 38 L. R. 1891 1 Q. B. 694; o0 L. J. post. Q. B. 400; 39 W. R. 712; 55 J. P. (5) lb. ss. 29, 32.

(2.) The application shall not be made until the prescribed notice of 45 40 Vict. the intention to make it has been given in the borough. c.10.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

Note. Withdrawal of Petition. â Further provisions as to the withdrawal of an election petition are contained in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884."

Where a municipal election petition presented on the ground that the unsuccessful candidate was returned by a majority of lawful votes had been submitted to arbitration, and the award of the arbitrator was against the petitioner, the Court allowed him to withdraw the petition. 2

In a case relating to a parliamentary election the Court refused to allow a petition to be amended by the withdrawal of certain charges contained in it, where the constituency would have been affected and it was too late for a fresh petition to be presented. 3

As to the withdrawal of a petition, see also the cases cited below. 4

Meaning of " prescribed." â This term is defined in sect. 77.

Security for Costs. â As to security for costs, see sect. 89.

Sect. 96.â (1.) An election petition shall be abated by the death of a Abatement at, sole petitioner or of the survivor of several petitioners. petition.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

(1) 47-48 Vict. c. 70, s. 26, post. Holford (1870), 2 O'M. H. 33; (2) *Mallam v. Bean* (1887), 51 North Durham Petitions (Glaholm J. P. 231. v. Elliott, Pickering v. Palmer) (3) *Aldridge v. Hurst* (1876), 1 (1874), 3 O'M. H. 1, 4; *Pascoe v. C. P. D.* 410; 35 L. J. C. P. 431; *Puleston* (Devonport Petition) (1886), 35 L. T. 156; 24 W. R. 708. 54 L. T. 733; 50 J. P. 134.

(4) Brecon Petition (*Overton v.*

*App* 7idix I.

45-46 Vict. c. 50.

Withdrawal and substitution of respondents.

Costs on election petitions.

Sect. 97.â (1.) If before the trial of an election petition a respondent other than a returning officerâ (a.) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or (b.) Gives the prescribed notice that he does not intend to oppose the petition; the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted a.- a respondent to oppose the petition, and shall be admitted accordingly; except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

Note. Death of Respondent, c. â By sect. 93 (11) the trial of a petition may be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition. A petition may even, for the purpose of claiming the seat, be presented after the death of the candidate whose return it is proposed to question. 1

Sect. 98.â (1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on

the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.

(2.) The costs may be taxed in the prescribed manner but according to the same principles as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed.

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and the prescribed officer shall thereon certify the recognisance to be forfeited, and it shall be dealt with as a forfeited recognisance relating to a parliamentary election petition.

Note.â Costs. â Further provisions as to the costs of municipal election petitions are contained in sect. 101, and in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 2 by which so much of sub-sect (2) as relates to the principles of taxation is repealed, being replaced by provisions in sect. 29 of that Act.

The decision of an election court as to costs is not subject to review by the High Court. 3

Where a person is improperly joined as a respondent on a petition the petitioners may be directed to pay his costs. 4 (1) *Morton v. Galway* (Tipperary Petition), (1875) 9 Ir. C. L. 173; S. C. nom. *Morton v. Mitchel*, 3 O'M. H. 19.

(2) 47 48 Vict. c. 70, ss. 29, 32, post.

(3) *Lotering x. Dawson Maidenhead Municipal J'etition* (No 2) (1875), L. R. 10 C. P. 726; 44 L. J. C. P. 321; 32 L. T. 823.

Sect. 99.â (1.) The town clerk shall provide proper accommodation for 45 4(5) Vict, holding the election court; and any expenses incurred by him for the c. 50.

purposes of this section shall be paid out of the borough fund or borough Recetpion of and rate, attendance on ' (2.) All chief and head constables, superintendents of police, head- r c t lecliou boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler, or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer shall attend at the trial of ai election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

Note. Expenses of Court. â As to the payment of these expenses, see sect. 101 and the note to that section.

Sect. 100.â (1.) The judges for the time being on the rota for the trial of EA les of pro-pa rlianientary election petitions, may from time to time make, revoke, and,"



ri "j e ic on alter General Rules for the effectual execution of this part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon.

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.

(5.) The duties to be performed by the prescribed officer under this part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

Note. General Rules. â As to the powers of making rules for the purposes of this part of the Act, see sect. 30 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884." The rules at present in force were made under the present section and are dated the 17th of April, 1883. They are closely modelled upon the corresponding rules relating to parliamentary election petitions. 2 (1) 47 48 Vict. c. 70, s. 30 liamentary Elections Act, 1868 (31 post. 32 Vict. c. 125) s. 25, on the 21s, t (2) The general rules at present Nov., 1868, the 19th Dec, 1868, the in force as to parliamentary election 25th March, 1869, and the 27th Jan., petitions were made under the Par 1875. As to these rules, see further 47 46 Vict. Particulars. â The rules under this part, among other things, authorize the c 50. Court or a judge to direct particulars of the charges in the petition to be given, 1 and provide, where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, for the delivery by the parties of lists of the votes intended to be objected to with the heads of objections to each vote; 2 they also require a respondent who proposes to raise a recriminatory case to give a list of the objections to the election upon which he intends to rely. 3

Agency. â Judges sitting as election courts for the trial of parliamentary election petitions have from the first, following the practice of election committees, set aside elections not only for malpractices on the part of the successful candidate personally but also for malpractices on the part of his agents; and now it is expressly enacted that a candidate guilty of certain offences by his agents shall forfeit his seat if he has been elected, and shall be subject to certain incapacities.

In dealing with questions as to the responsibility thus cast upon a candidate for the acts of his agents, election courts, in this respect also following the former practice of election committees, have very largely extended the ordinary principles of agency.

In the first place, circumstances are sufficient to establish the relation of principal and agent between a candidate and persons engaged in furthering his candidature that would, with respect to ordinary transactions, be wholly insufficient to establish agency. Questions as to whether the fact of agency is or is not established by the evidence continually arise at the trial of election petitions. It is not possible to deal fully with the reported decisions on such questions within the limits of the present work, more especially as: such questions are as much questions of fact as of law, so that the effect of the decisions cannot be accurately expressed with any degree of conciseness. "It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption, as should constitute agency. No one yet has been able to go further than to say, as to some cases, enough has been established; as to other, enough has not been established to vacate the seat." 5 Perhaps the following remarks of Grove, J., 6 are as accurate a general statement of the principles by which election courts are guided on questions as to the fact of agency as could be given: "To establish agency for which the candidate would be responsible, he must be proved by himself or by his authorized agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the Corrupt and Illegal Practices Hon) (1892), L. R. 1893 1 Q. B.

Prevention Act, 1883 (46 47 Vict. 118; 41 W. R. 124.

c. 51), s. 56 (2); Shaw v. Reckitt (2) Rule 7, and see Meld v. Batti (Pontefract Petition) (1893), L. R. (1874), L. R. 9 C. P. 104; 43 L. J.

1893 1 Q. B. 779; 68 L. T. 688; C. P. 73; 29 L. T. 747; 22 W. R. 407; 41 W. R. 497. Munro v. Balfour, ubi sup.

(1) Rule 6, and see, as to the (3) Rule 9.

leaking of an order for particulars, (4) Corrupt and Illegal Practices

Beale v. Smith (1869), L. R. 4 C. P. Prevention Act, 1883 (46 47 Vict.

145; 38 L. J. C. P. 145; 17 W. R. c. 51), ss. 5, 11. Similar provisions 317; Maude v. Lowleg (1874), L. R. as to municipal elections are contained 9 C. P. 165; 43 L. J. C. P. 103; 30 in the Municipal Elections (Corrupt L. T. 168; 22 W. R. 649; Lenham and Illegal Practices) Act, 1884 v. Barber Hereford Petition) (1883), (47 48 Vict. c. 70), ss. 3, 8.

10 Q. B. D. 293; 52 L. J. Q. B. 312; (5) Per Blackburn, J., Bridge-31 W. R. 428; 48 J. P. 23; Clark v. water Petition ( Westropp v. King-Watfond (1883), 52 L. J. Q. B. 321; lake) (1869), 1 O'M. H. 112, at Munro v. Balfour (East Manchester p. 115.

Petition) (1892), L. R. 1893 1 Q. B. (6)-In the Taunton Petition (Mar- 113; 67 L. T. 526; 41 W. R. 143; shall v. James) (1874), 2 O'M. H.

Eushmore v. Isaacson (Stepney l'eti 66, at p 74; 8. C. 30 L. T. 125.

the purpose of promoting his election." The learned judge, however, was 45 40 Vict careful to explain that these remarks were not to be taken as an exhaustive definition of agency.

Again, once the fact of agency is established, the candidate is responsible, generally speaking, for all the acts of the agent, including acts that the candidate may not have authorized or may even have expressly forbidden." A person may, however, have a limited authority as agent, as, for instance, to canvass particular voters, and in that case the candidate will not be responsible for acts of the agent entirely beyond the limits of his authority. 2

Again the maxim *delegatus non potest delegare* does not apply to electioneering-agents, and the candidate is accordingly responsible not only for the acts of his immediate agents, but also for the acts of sub-agents acting under the authority of an immediate agent. 3

Prima facie the agency comes to an end as soon as the election is over, so that the candidate is not responsible for acts of persons, who were his agents while the election was pending, done after the election, unless there is evidence to connect the candidate with the act in question. 4

It should be observed that the liability of the candidate to prosecution for offences against election law committed by other persons is not regulated by the peculiar principles as to electioneering agency above referred to, but is, by the ordinary principles of the criminal law, confined to offences committed by his authority or with his consent. 5

Scrutiny. â This term means the enquiry into the validity of individual votes that is usually rendered necessary where a petition claims the seat for an unsuccessful candidate on the ground that he had the majority of legal votes.

Rules under which the parties to a petition in which the seat is claimed are required to furnish lists of the votes they propose to attack have been mentioned above.

Votes may, on a scrutiny, be struck off on the ground that they were given by persons not qualified to vote. In the case of a parliamentary election, the register of electors is, under sect. 7 of the Ballot Act, 1872, conclusive as to the right to vote, except in the case of "persons who, from some inherent or for the time irremovable quality in themselves have not, either by prohibition of statutes or at common law, the status of parliamentary electors." 7 Votes of persons whose names are on the register cannot therefore be struck off on the ground that their names ought not to be on the register by reason of insufficiency of qualification, non-residence, receipt of parochial relief or alms, c. 8 Sect. 7 of the Ballot Act is inapplicable to municipal elections, but the principle laid down in *Stoive v. Jolliffe* would no doubt be followed with regard to such (1) This doctrine was established in the Norwich Petition (*Tillett v. Stracey*) (1869), 1 O'M. H. 8; 19 L. T. 615, and has been acted upon in numerous cases since: see, e. g. the Taunton Petition (*Mellor v. Cox*) (1869) 1 O'M. H. 181; 21 L. T. 169, where the doctrine is very clearly laid down by Blackburn, J.

(2) Bodmin Petition (*Adams v. Gower*) (1869), 1 O'M. H. 117; Harwich Petition (*Tomline v. Tilor*) (1880), per Lush, J., 3 O'M. H. 61 at p. 69; S. C. 44 L. T. 187; West-bury Petition (*Laverton v. Phipps*) (1880), 3 O'M. H. 78.

(3) See, e. g. Beudlei Petition (*Sturge v. Glass*) (1869), 1 O'M. H. 16; 19 L. T. 676; Barnstaple Petition (*Fleming v. Care*) (1874), 2 O'M. H. 105; Plymouth Petition (*Latimer v. Bates*) (1880), 3 O'M. H. 107.



(4) Salford Petition (*Anderson v. Cawletj*) (1869), 1 O'M. H. 133; 20 L. T. 120; North Norfolk Petition (*Colman v. Walpole*) (1869), 1 O'M. H. 236, at p. 243; 5. C. 21 L. T. 264.

(5) See per Martin, B., in the Norwich Petition (*Tillett v. Stracei*) (1869), 1 O'M. H. 8; 19 L. T. 615; *Kogers on Elections*, part II., 16th edition, p. 317.

(6) 35 36 Vict. c. 33, s. 7.

(7) *Stou-e v. Jolliffe* (*Petersfield Petition*) (No. 2) (1874), L. R. 9 C. P. 734, at p. 750; S. C. 43 L. J. C. P. 265; 30 L. T. 795; 22 W. R. 911; see also *Ilayward v. Scott* (1879), 5 C. P. D. 231; 49 L. J. C. P. 167; 41 L. T. 476; 28 W. R. 988.

45 46 Vict. an election. 1 Whether it would be followed with regard to elections under c. 50. the Local Government Act, 1894, seems doubtful. 2 Among persons whose votes would at common law be struck off on a scrutiny in the case of a parliamentary, and also it is submitted in the case of a municipal election, are aliens, 3 lunatics, 4 and infants. 5 The votes of persons expressly forbidden by statute to vote at municipal elections, such as felons, 6 persons who have within a certain time before the election been found guilty of certain offences at parliamentary or other elections, 7 persons employed for payment in connection with the election, 8 and persons adjudged incapable of voting under the Public Bodies Corrupt Practices Act, 1889, 9 would clearly be struck off at a scrutiny on a municipal petition.

Votes affected by corruption or offences against election law may also be struck off on a scrutiny. 10

Again, votes may be struck off that should have, but have not, been rejected by the returning officer as invalid under the Ballot Act, 1872; u and votes that the returning officer has erroneously rejected, and tendered ballot papers, if it appears that the persons tendering the same were entitled to vote, may be counted. 12

Seating of Unsuccessful Candidates; Throwing away of Votes. â Where the successful candidate at an election is disqualified for the office for which he is standing, but the circumstances disqualifying him are unknown to the electors, the unsuccessful candidate is not entitled to the seat, but the election will be wholly set aside. Where, however, the electors have express notice that a candidate is disqualified, or where the facts that in point of law disqualify him are notorious in the locality, votes given for him are entirely thrown away as if such votes had not been given at all; and, if such candidate has obtained the majority of votes, the unsuccessful candidate will accordingly be seated in his place. 13

It was held in one case that votes given for a candidate who was disqualified were not thrown away where the facts disqualifying him were notorious, but it was not generally known that such facts had in point of law that effect; u but this case must apparently now be regarded as overruled. 15

The circumstance that a candidate has been guilty of corrupt practices, and is therefore liable to be unseated, does not disqualify him to be elected so as (1) See ss. 9, 45, and 51 of the votes in the case of a municipal elec-present Act, and see also *Beg. v. tion*, see s. 85, ante, and the note to *Tugwell* (1868), L. R. 3 Q. B. 704; that section, and the *Municipal Elec*-38 L. J. Q. B. 12; 9 B. S. 367. tions (*Corrupt and Illegal Practices*) (2) See 56 57 Vict. c. 73, Act, 1884 (47 48 Vict. c. 70) s. 22, s. 44-(1), and the note to that sec post.

tion, ante. (11) See s. 2 of that Act (35 36 (3) *Isaacson v. Durant* (Stepney Vict. c. 33) and the note to that Petition) (1886), 17 Q. B. D. 54; 55 section, ante.

L. J. Q. B. 331; 54 L. T. 684; 34 (12) As to tendered ballot papers,

W. R. 547. see the Ballot Act, 1872 (35 36 (4) See the Bedfordshire case Vict. c. 33), first schedule, rule 27, (1785), 2 Lud. at p. 567. ante.

(5) Londonderry Petition (*Mccar* (13) *Drinkwater v. Deakin* (Laun-thyv. Lewis) (1886), 4 O'M. H. 96. ceston Petition) (1874), L. R. 9 C. P.

(6) 33 34 Vict. c. 23, s. 2. 626; 43 L. J. C. P. 355; 30 L. T.

(7) Corrupt and Illegal Practices 832; Beresford Hope v. Sandhurst Prevention Act, 1883 (46 47 Vict. (1889), 23 Q. B. D. 79; 58 L. J. Q. B. c. 51), ss. 6 (3), 10, 37, 38 (5); 316; 61 L. T. 150; 37 W. R. 548; Municipal Elections (Corrupt Ille 55 J. P. 805; *Cux v. Ambrose* (1890), ral Practices) Act, 1884 (47 48 60 L. J. Q. B. 114; 55 J. P. 23. Vict. c. 70), post, ss. 2 (2), 8 (2), 23, (14) *Beg. v. Tewkesbury* (Mayor, 28 (4). 4-c.) (1868), L. R. 3 Q. B. 629; (8) Municipal Elections (Corrupt 37 L. J. Q. B. 288; 18 L. T. 851; and Illegal Practices) Act, 1884 16 W. R. 1200; 9 B. S. 683.

(47 48 Vict. c. 70), s. 13 (3). (15) Beresford Hope v. Sandhurst (9) 52 53 Vict. c. 69, s. 2. ubi sup.

(10) As to the striking off of such to cause votes given for him to be thrown away, even after express notice to 45 46 Vict, the electors of the candidate's guilt. 1 c 50

Powers of High Court. â The provision that the High Court are to have the same powers, c, on an election petition, as if the petition were an ordinary-action, is governed by the words "subject to this Act," which materially limit the effect of the provision: see the cases cited in the next two footnotes.

Amendment of Petition. â The Court will not allow a petition to be amended, after the lapse of the time within which a petition must be presented, by the introduction of substantially fresh charges; as that would amount in effect to the presentation of a fresh petition out of time. 2

Discovery. â The High Court has no jurisdiction on an election petition to make an order for the administration of interrogatories, 3 or for the discovery of documents. 4

Sect. 101. â (1.) The remuneration and allowances to be paid to a com- Expenses of missioner for his services in respect of the trial of an election petition, and electclkm court, to any officers, clerks, or shorthand writers employed under this part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate.

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely): (a.) "When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner; (6.) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that; respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given

under this part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

Note. Expenses Election of Court. â With regard to the payment of expenses under the present section, see the case cited below. 5

Sect. 102. Where a candidate who has been elected to a corporate office Acts done pend-is, by a certificate of an election court or a decision of the High Court, in S a petition declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Sect. 103. Where on an election petition the election of any person to a Provisions as to corporate office has been declared void, and no other person has been room Oj persons declared elected in his room, a new election shall be held to supply the unseated on vacancy in the same manner as on a casual vacancy; and for the purposes petition. of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, (1) Drinkwater v. Deakin, ante, Petition) (1880), 5 C. P. D. 546; 49 p. 318. L. J. C. P. 681.

(2) Maude v. Lowley (1874), L. R. (4) Moore v. Kennard (Salisbury 9 C. P. 165; 43 L. J. C. P. 105; 29 Petition) (1883), 10 Q. B. D. 290; L. T. 924; Clark v. Wallond (1883), 52 L. J. Q. B. 285; 48 L. T. 236; 52 L. J. Q. B. 321; 48 L. T. 762; 31 31 W. R. 610; 47 J. P. 343.

W. R. 551; S. C. nam. Clark v. (5) Req. v. 31aidenhead Mayor,

Lowley, 47 J. P. 551. c.) (1882), 9 Q. B. D. 496; 51 (3) Wells v. Wren (Wallingford L. J. Q. B. 444; 46 J. P. 724.

45 46 Vict, or other person who might have acted for him if he had been incapacitated c. 50. by illness.

Prohibition of disclosure of vote.

Note. Casual Vacancies. â As to such vacancies, see sects. 40 and 66.

Sect. 104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

Note. Provisions of the Ballot Act, 1872.â That Act contains provisions precisely similar to those in the present section. 1

PAKT VII.

Bokough Fund: Borough Bate: County Bate.

Application of borough fund.

Sect. 140.â (1.) The borough fund shall be applicable to and charged with the several payments specified in the Fifth Schedule.

(2.) The payments specified in Part I. of that Schedule may be made without order of the Council; those specified in Part II. may not be made without such order.

Note. Expenses of Elections. â Among the payments specified in Part II. of the Fifth Schedule are "the expenses incurred by overseers, and by the town clerk and other municipal authorities, in relation to the enrolment of burgesses and the holding of municipal elections, or so much of those expenses as is not otherwise provided for under sect. 30 of the Parliamentary and Municipal Registration Act, 1878." The present section and the portion of the Fifth Schedule quoted above appear to be the



provisions of the Act with respect to the " expenses of the elections of councillors of a borough," which are referred to in sect. 48 (4) of the Local Government Act, 1894.

Prosecution of offences and recovery of fines.

Procedure in penal actions against corporate officers.

PAET XII.

Legal Proceedings.

Sect. 219.â (1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence.

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions.

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

Sect. 224.â (1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(1) 35 36 Vict. c. 33, s. 12, ante.

(3.) Unless judgment is given for the plaintiff, the defendant shall be 45 46 Vict, entitled to costs, to be taxed as between solicitor and client. c. 00.

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the coshi of action, be paid to the plaintiff.

Note. Application of Section. â This section would appear to be applicable under sect. 48 (4) of the Local Government Act, 1894, as regards a fine for acting in any oirree to which that sub-section refers without having made the necessary declaration, but not otherwise.

Repeal. â The section appears to be partially repealed by the Publi: Authorities Protection Act, 189L!. 1

PART XIII,

General. Time.

Sect. 230.â (1.) Where by this Act any limited time from or after any Computation of date or event is appointed or allowed for the doing of any act or the taking time-of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act

or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

Note. Computation of Time. With regard to the computation of time generally, see the note to sect. 73 of the Local Government Act, 1894, ante.

Declarations and Oaths.

Sect. 239. (1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other ministerial person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorize the taking or making of any oath or declaration that would not have been required or authorized under the Promissory Oaths Act, 1868, or otherwise 31 & 32 Vict. by law, if this Act had not been passed, or interfere with the operation of c. 72. the Promissory Oaths Act, 1868.

(1) 56 & 57 Vict. c. 61, s. 2, post.

45 & 46 Vict, c. 50.

Forms in schedule.

Appendix I.

Forms.

Sect. 240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

Saving for military and naval officers, &c.

Sect. 253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

SCHEDULES.

THIRD SCHEDULE.

Elections.

' Part III.-Modifications of the Ballot Act in its Application to Municipal Elections.

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and Rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the

election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided.

6. No return shall be made to the clerk of the Crown in Chancery.

Note. 31 Modifications of the Ballot Act. â With regard to the application of the portions of Schedule III. above set out to elections under the Local Government Act, 1894, and to a poll consequent on the parish meeting, see the note to sect. 58.

Forms.

Part I. â Declarations on accepting Office.

Form A.

Form of Declaration on Acceptance of Corporate Office.

I, A. B., having been elected mayor or alderman, councillor, elective auditor, or revising assessor for the borough of, hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability and in the case of the person being qualified by estate sag, And I-hereby declare that I am seized or possessed of real or personal estate, or both as the case may be', to the value or amount of one thousand pounds, or five hundred pounds as the case may require', over and above what will satisfy my just debts.

45 4G Vict. c. 50.

Appendix 2.

46 47 Vict. c. 51.

THE CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1883.

46 47 Vict. c. 51.

An Act for the better prevention of Corrupt and Illegal Practices at Parliamentary Elections. 25th August 1883.

Note. Application of Act. â The present Act deals with malpractices at parliamentary elections and with parliamentary election petitions. Many of its provisions have, however, been extended to municipal elections by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 1 These provisions will accordingly apply in the case of an election under the Local Government Act, 1894, and perhaps to some extent in the case of a poll consequent on a parish meeting, by virtue of sect. 48 of that Act, subject to the provisions of that Act, and to any adaptations, alterations, and exceptions that may be made by the rules that are to be framed by the Local Government Board.

Sects. 1 and 2 of the present Act define the offences of " treating " and " undue influence "; they are applied to municipal elections by the Act of 1884, 2 and are, with the omission of a recital in sect. 1, setting out that under the then existing enactments, persons other than candidates at parliamentary elections were not liable to punishment for treating, set out verbatim in the 1st Schedule to that Act.



As to the application of sect. 6 of the present Act to municipal elections, see the note to that section.

Portions of sects. 37 and 38 of the present Act are applied to municipal elections by sect. 23 of the Act of 1884, 3 and are set out in the 3rd Schedule to that Act.

Sects. 45, 46, 50-57, 59 and 60 of the present Act are, with certain modifications, applied to municipal elections by sect. 30 of the Act of 1884. 4

Only such of the provisions of the present Act applicable to municipal elections as are not contained in the schedules to the Act of 1884, are printed below.

Punishment of Sect. 6. (1.) A person who commits any corrupt practice other than personation, or aiding, abetting, counselling, or procuring the commission of corrupt practices. A person guilty of the offence of personation, shall be guilty of a misdemeanor, and on conviction on indictment shall be liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding two hundred pounds.

(2.) A person who commits the offence of personation, or of aiding, abetting, counselling, or procuring the commission of that offence, shall be guilty of felony, and any person convicted thereof on indictment shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

(3.) A person who is convicted on indictment of any corrupt practice shall (in addition to any punishment as above provided) be not capable during a period of seven years from the date of his conviction: (a.) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office within the meaning of this Act; or (1) 47 48 Vict. c. 70, post.

The Corrupt and Illegal Practices Prevention Act, 1883. 325 (.) of holding any public or judicial office within the meaning of this 46 47 Vict. Act, and if he holds any such office the office shall be vacated. c. 51. t (4.) Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction.

Note. Municipal Elections. The present section is applied to persons guilty of corrupt practices at municipal elections, by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 1

Corrupt Practice. This expression in the case of a municipal election includes treating, undue influence, bribery, and personation, as defined by the last mentioned Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation. 2 It has practically exactly the same meaning as regards parliamentary elections. 3

Penalty. Where a person is guilty of several corrupt practices at the same election, he is apparently liable to be separately punished for each offence. 4

Definition of Terms. As to the meaning of the expressions " indictment," "public office," and "judicial office," see sect 64 of the present Act, and sect. 34 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 5

Sect. 45. Where information is given to the Director of public Inquiry by prosecutions that any corrupt or illegal practices have prevailed in p' 0 sections into a reference to any election, it shall be his duty, subject to the regulations a n e t; ed corrupt under the Prosecution of Offences Act, 1879, to make such inquiries and or illegal prac-institute such prosecutions as the circumstances of the case appear to him tices. to require.

Note. Director of Public Prosecutions. â With regard to the duties of the Solicitor to the Treasury, who now discharges the duties of director of public prosecutions, 6 see sect. 57, port, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, sects. 28 and 30 7

Sect. 46. Where a person has, either before or after the commencement Removal of in-â of this Act, become subject to any incapacity under the Corrupt Practices capacity on proof Prevention Acts or this Act by reason of a conviction or of a report of curedvymnurr. any election court or election commissioners, and any witness who gave evidence against such incapacitated person upon the proceeding for buch â conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the Court, if satisfied that the conviction or report so far as respects such person was based upon perjury, may order that such incapacity shall thenceforth cease, and the same shall cease accordingly.

Sect. 50. Where an indictment as defined by this Act for any offence Trial in Central â under the Corrupt Practices Prevention Acts or this Act is instituted in o X mem' for the High Court or is removed into the High Court by a writ of certiorari corrup t practice issued at the instance of the Attorney-General, and the Attorney-General at instance of suggests on the part of the Crown that it is expedient for the purposes of Attorney-justice that the indictment should be tried in the Central Criminal Genera â Court, or if a special jury is ordered, that it should be tried before a judge and jury at the Royal Courts of Justice, the High Court may, if it think lit, order that such indictment shall be so tried upon such terms as the .(1) 47 48 Vict. c. 70, s. 2, post. (5) 47 43 Vict. c. 70, s. 34, (2) lb. post.

(3) See s. 3 of the present Act. (6) Prosecution of Offences Act, (4) *Mines v. Bale* (1875), L. R. 10 1884 (47 48 Vict. c. 58) s. 2.

C P. 591; 44 L. J. C. P. 336; 33 (7) 47 48 Vict. c. 70, ss. 28, 30,

L. T. 174; 23 W. R. 660. post.

Appendix I.

46 47 Vict. c. 51.

Limitation of time for prosecution of offence.

Persons charged with corrupt practice may be found guilty of illegal practice.

Application of enactments of 17 18 Vict. c. 102, and 26 27 Vict. c. 29, relating to prosecutions for bribery. 17 18 Vkt. c. 102.

26 27 Vict. C. 29.

Court may think just, and the High Court may" make such orders as appear to the Court necessary or proper for carrying into effect the order for such trial.

Note. Indictment. â This expression includes information: see sect. 64.

Sect. 51.â (1.) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence under the Corrupt Practices Prevention Acts or

this Act shall be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by election commissioners shall be commenced within one year after the offence was committed, or within three months after the report of such commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed, and the time so limited by this section shall, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether before an election court or otherwise, be substituted for any limitation of time contained in the last-mentioned Acts.

(2.) For the purposes of this section the issue of a summons, warrant, writ, or other process shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

Note. Municipal Elections. â The provisions of the present section relating to an enquiry by election commissioners are inapplicable to a municipal election.

Sect. 52. Any person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that purpose be an indictable offence,) and any person charged with an illegal practice may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice, and a person charged with illegal payment, employment, or hiring, may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

Note. Meaning of Expressions. â As to the meaning of " corrupt practice," see the note to sect. 6, ante. The Municipal Elections (Corrupt and Illegal Practices) Act, 188-t, as regards municipal elections, declares what acts amount to "illegal practices," 1 "illegal payment," 2 "illegal employment," 3 and " illegal hiring." 4

Sect. 53â (1.) Sections ten, twelve, and thirteen of the Corrupt Practices Prevention Act, 1854, and section six of the Corrupt Practices Prevention Act, 1863 (which relate to prosecutions for bribery and other offences under those Acts), shall extend to any prosecution on indictment for the offence of any corrupt practice within the meaning of this Act, and to any action for any pecuniary forfeiture for an offence under this Act, in like manner as if such offence were bribery within the meaning of those Acts, and such indictment or action were the indictment or action in those sections mentioned, and an order under the said section ten may be made on the defendant; but the Director of public prosecutions or any person instituting any prosecution in his behalf or by direction of an election court shall not be deemed to be a private prosecutor, nor required under the said sections to give any security.

(1) 47 48 Vict. c. 70, ss. 4, (3) lb. s. 13.

5 (2), 6, 14, 17 (2), 21 (5). (4) lb. ss. 10, 16.

(2.) On any prosecution under this Act, whether on indictment or 46 47 Vict. summarily, and-whether before an election court or otherwise, and in any c. 51 action for a pecuniary forfeiture under this Act, the person prosecuted or sued, and the



husband or wife of such person, may, if he or she think fit, be examined as an ordinary witness in the case.

(3.) On any such prosecution or action as aforesaid it shall be sufficient to allege that the person charged was guilty of an illegal practice, payment, employment, or hiring within the meaning of this Act, as the case may be, and the certificate of the returning officer at an election that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, shall be sufficient evidence of the facts therein stated.

Note. Corrupt Practices Prevention Act, 1834.â The sections of this Act 1 above referred to are as follows:â

Sect. 10. " It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said Court shall appear to have been reasonably incurred in and about the conduct of such prosecution; provided always, that no indictment for bribery or undue influence shall be triable before any court of Quarter Sessions."

Sect. 12 " In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given."

Sect. 13 "It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognisance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs."

The Corrupt Practices Prevention Act, 1863.â Section 6 of this Act 2 is as follows:â " In any indictment or information for bribery or undue influence, and in any action or proceeding for any penalty for bribery, treating, or undue influence, it shall be sufficient to allege that the defendant was at the election at or in connection with which the offence is intended to be alleged to have been committed guilty of bribery, treating, or under influence (as the case may require); and in any criminal or civil proceedings in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat."

Indictment. â The expression " indictment" includes information: see sect. 64. It is not sufficient in an indictment under the present Act to charge the defendant with a " corrupt practice " generally; the indictment must charge him with bribery, personation, or some other specified corrupt practice. 3

Sect. 54.â (1.) All offences under this Act punishable on summary Prosecution on conviction may be prosecuted in manner provided by the Summary t Yai” ’ Jurisdiction Acts. to quarter (2.) A person aggrieved by a conviction by a court of summary sions.

(1) 17 18 Vict. c. 102. case the defect in the indictment, (2) 26 27 Vict. c. 29. which charged corrupt practices (3) Reg. v. Stroulger (1886), 17 generally, was however by the: ma-Q. B. D. 327; 55 L. J. M. C. 137; jority of the Court, Denman, and 55 L. T. 122; 34 W. R. 719; 51 Dav, "jj., dissenting, held to be cured J. P. 278; 16 Cox C. C. 85. In that after verdict.

#### Appendix I.

Application or Summary Jurisdiction and Indictable Offences Acts to proceedings before election courts.

4G 47 Vict, jurisdiction for an offence under this Act may appeal (o general or quarter c 51. sessions against such conviction.

Note. Limitation of Time. â The provisions of the Summary Jurisdiction Acts as to the limitation of time for the commencement of proceedings, are superseded for the purposes of the present Act by sect. 51.

Sect. 55.â (1.) Except that nothing in this Act shall authorise any appeal against a summary conviction by an election court, the Summary Juisdiction Acts shall, so far as is consistent with the tenor thereof, apply to the prosecution of an offence summarily before an election court, iti like mauner as if it were an offence punishable only on summary conviction, and accordingly the attendance of any person may be enforced, the case heard and determined and any summary conviction by such court be carried into effect and enforced, and the costs thereof paid, and the record thereof dealt with under those Acts in like manner as if the court were a petty sessional court for the county or place in which such conviction took place.

(2.) The enactments relating to charges before justices against persona for indictable offences shall, so far as is consistent with the tenor thereof, apply to every case where an election court orders a person to be prosecuted on indictment in like manner as if the court were a justice of the peace.

Note. Indictment ordered by an Election Court. â The enactments referred to in sub-sect. (2), appear to be contained in the Indictable Offences Act, 1848, l and the Criminal Law Amendment Act, 1867. 2 With regard to an indictment ordered by an election court in the case of a municipal election, see also sect. 28 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

Sect. 56.â (1.) Subject to any rules of court, any jurisdiction vested by this Act in the High Court may, so far as it relates to indictments or other criminal proceedings, be exercised by any judge of the Queen’s Bench Division, and in other respects may either be exercised by one of the judges for the time being on the rota for the trial of election petitions, sitting either in court or at chambers, or may be exercised by a master of the Supreme Court of Judicature in manner directed by and subject to an appeal to the said judges:

Provided that a master shall not exercise jurisdiction in the case either of an order declaring any act or omission to be an exception from the provisions of this Act with respect to illegal practices, payments, employments, or hirings, or of an order allowing an excuse in relation to a return or declaration respecting election expenses.

(2.) Rules of court may from time to time be made, revoked, and altered for the purposes of this Act, and of the Parliamentary Elections Act, 1868, and the Acts amending the same, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can for the time being be made.

Note. Rules of Court. â The power of making rules of court for procedure and practice in the Supreme Court of Judicature, is vested in a rule committee under the Judicature Act, 1881. 4

As to the bearing of rules made under the Parliamentary Elections Act, 1868, before the passing of the present Act, on the jurisdiction conferred on the High Court by its provisions, see the case cited below. 5

Director of public Sect. 57.â (1.) The Director of public prosecutions in performing any prosecutions, and duty under this Act shall act in accordance with the regulations under expenses of p: o- (4) 44 45 Vict. c. 68, s. 19.

(5) Shaw v. Reckitt Pontefraet Petition), (1893) L. K. 1893 1 Q. 11. 779; 68 L. T. 688; 41 W. K. 497.

Exercise of Jurisdiction of High Court, and making of rules of court.  
6ecutions. 42 43 Vict, c. 22.

The Corrupt and Illegal Practices Prevcjition Act, 1883. 329 the Prosecution of Offences Act, 1879, and subject thereto in accordance 46 47 Vict. with the directions (if any) given to him by the Attorney General; and c. 51.

any assistant or representative of the Director of public prosecutions in performing any duty under this Act shall act in accordance with the said regulations and directions, if any, and with the directions given to him by the director of public prosecutions.

(2.) Subject to the provisions of this Act, the costs of any prosecution on indictment for an offence punishable under this Act, whether by the Director of public prosecutions or his representative or by any other person, shall, so far as they are not paid by the defendant, be paid in like manner as costs in the case of a piosecution for felouy are paid.

Note. Director of Public Prosecutions. â The Solicitor to the Treasury, how, under the Prosecution of Offences Act, 1884, 1 amending the Act of 1879, 8 above mentioned, acts as director of public prosecutions. As to the duties of this official in connection with municipal elections, see sect. 45, ante, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, sects. 28 and 30. s

Sect. 59.â (1.) A person who is called as a witness respecting an Obligation of election before any election court shall not be excused from answering wl " es r sto d any question relating to any offence at or connected with such election, certificate 0 f on the ground that the answer thereto may criminate or tend to criminate indemnity, himself or on the ground of privilege; Provided thatâ (a.) a witness who answers truly all questions which he is required by the election court to answer shall be entitled to receive a certificate of indemnity under the hand of a member of the court stating that such witness has so answered: and (b.) an answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him: (2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted



against him for any offence under the Corrupt Practices Prevention Acts or this Act committed by him previously to the date of the certificate at or in relation to the said election, the court having cognizance of the case shall on proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceeding to enforce such incapacity (other than a criminal prosecution).

Note. Witnesses before Election Court. â With regard to the present section, reference may be made to the cases cited below. 4 The Municipal Elections (Corrupt and Illegal Practices) Act, 1884, provides, with regard to municipal election petitions, that the giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive. 5

Omitted Portions of Section. â Sub-sects. (4) and (5) of the present section relate to proceedings before election commissioners, and are inapplicable to municipal elections.

(1) 47 48 Vict. c. 58. 334; 8 Cox C. C. 498; Eeq. v.

(2) 42 43 Vict. c. 22. JJulme (1870) L. R. 5 Q. B. 377; 39 (3) 47 48 Vict. c. 70, ss. 28, 30, L. J. Q. B. 149; 22 L. T. 073; 18 post. W. R. 830.

(4) Beg. v. Leaf ham (1861), 3 (5) 47 48 Vict. c. 70, s. 30, E. E. 658; 30 L. J. Q. B. 205; 7 post.

Jur. N. S. 674; 3 L. T. 777; 9 W. R.

46" 47 Vict. Sect. 60. An election court or election commissioners, when reporting c 51. that certain persons have been guilty of any corrupt or illegal practice,

Submission of shall report whether those persons have or not been furnished with report of election certificates of indemnity; and such report shall be laid before the court or comnns- Attorney-General (accompanied in the case of the commissioners with the Attorney l evidence on which such report was based) with a view to his instituting

General. or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution.

General interpve- Sect. 64. In this Act, unless the context otherwise requiresâ tation of terms. r g, ex p r e s s i 0 n " election " means the election of a member or members to serve in Parliament: The expression " election petition" means a petition presented in 31 32 Vict. pursuance of the Parliamentary Elections Act, 1868, as amended by Â â 125. this Act:

The expression "election court" means the judges presiding at the trial of an election petition, or, if the matter comes before the High

Court, that court:

The expression " Election Commissioners" means commissioners 15 ig Vict. appointed in pursuance of the Election Commissioners Act, 1852, and c- 57 the enactments amending the same:

The expression "High Court" means Her Majesty's High Court of

Justice in England: The expressions "a court of summary jurisdiction," "petty sessional court," and "Summary Jurisdiction Acts" have the same meaning 42 43 Vict. as in the Summary Jurisdiction Act, 1879: c 49 The expression "the Attorney-General" includes the Solicitor-

General in cases where the office of the Attorney-General is vacant or the Attorney-General is interested or otherwise unable to act: The expression "registration officer" means the clerk of the peace in a county, and the town clerk in a borough, as respectively defined by the enactments relating to the registration of parliamentary electors: The expression "elector" means any person whose name is for the time being on the agister roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used: The expression "register of electors" means the said register, roll, or book:

The expression "polling agent" means an agent of the candidate 35 36 Vict. appointed to attend at a polling station in pursuance of the Ballot c 33. A c t; 1872, or of the Acts therein referred to or amending the same:

The expression "person" includes an association or body of persons, corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

The expression "committee room" shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committee men, or others:

The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations or to the Poor Law, or under the 33 34 Vict. Elementary Education Act, 1870, or under the Public Health Act, c 75. 1875, or under any Acts amending the above-mentioned Acts, or 38 39 Vict. under any other Acts for the time being in force (whether passed c 55 before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman,

The Corrupt and Illegal Practices Prevention Act, 1883. 331 councillor, guardian, member of a board, commission, or other local 46 47 Viet.

authority in any county, city, borough, union, sanitary district, or in any other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office; and the expressions "election,"

"election petition," "election court," and "register of electors,"

shall, where expressed to refer to an election for any such public office, be construed accordingly:

The expression "judicial office" includes the office of justice of the peace and revising barrister:

The expression "personal expenses" as used with respect to the expenditure of any candidate in relation to any election includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election:

The expression "indictment" includes information:

The expression "costs" includes costs, charges, and expenses:

The expression "payment" includes any pecuniary or other reward; and the expressions "pecuniary reward" and "money" shall be deemed to include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly:

The expression "Licencing Acts" means the Licencing Acts, 1872 to 1874:

Other expressions have the same meaning as in the Corrupt Practices Prevention Acts.

Note. Definitions. â Certain of the above definitions are modified for the purposes of the application of the provisions of the Act to municipal elections by sect. 34 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 1 (1) 47 48 Vict. c. 70, s. 34, post.

47 48 Vict, c. 70.

Appendix I.

Short title.

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

47 48 Vict. c. 70.

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections. 14th August 1884.

Note. Application of Act. â The present Act and Part IV. of the Municipal Corporations Act, 1882, 1 which it amends, are, by sect. 48 (3) of the Local Government Act, 1894, 2 rendered applicable, subject to the provisions of that Act and to adaptations, alterations, and exceptions made by rules to be framed by the Local Government Board, to every election regulated by rules framed under that Act "in like manner as in the case of a municipal election." The Act will therefore apply to elections of parish councillors, 3 guardians, 4 district councillors of a county district other than a borough, 5 members of the local board of Woolwich, members of metropolitan vestries under the Metropolis Management Acts, and auditors elected under those Acts. 6 It will apparently also to some extent apply in a similar manner to every poll consequent on a parish meeting. 7

The Act is at present applied to various non-municipal elections, including elections of guardians and of members of urban sanitary authorities other than municipal corporations, by sect. 36. That section, however, appears to be impliedly repealed by the Local Government Act, 1894. The operation of sect. 37, which modifies the provisions of the Act in its application to the non-municipal elections referred to in sect. 36, is on the other hand expressly extended to elections under the Local Government Act, 1894, by sect. 48 (3, 6) of that Act.



Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Sect. 1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

Definition and punishment of corrupt practice at municipal election.

Corrupt Practices.

Sect. 2.â (1.) The expression " corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.

(1) 45 46 Vict. c. 50, pt. IV., ante.

(2) 56 57 Vict. c. 73 s. 48 (3).

(3) lb. s. 3 (6).

(4) lb. s. 20 (5), and see s. 30.

(5) lb. ss. 23 (5), 24 (4).

(6) lb. s. 31 (1).

(7) lb. s. 48 (8).

Note. Treating. â Section 1 of the Corrupt and Illegal Practices Preven- 47 48 Vict, tion Act, 1883, 1 which now defines the offence of treating, is practically a c. 70.

re-enactment of the corresponding section of the Corrupt Practices Prevention Act, 1854, 2 with this important difference, that it makes corrupt treating by any person whomsoever a corrupt practice, while the earlier enactment was confined to treating by a candidate, either directly, or through other persons on his behalf.

The word " corruptly " governs the whole section, and means merely " with the object and intention of doing that thing which the statute intended to forbid." 3

With regard to the nature of the offence, Cave J., 4 saidâ " In my judgment the statute does not apply to that form of treating which exists occasionally between social equals, where first the one treats and then the other treats, and which is only one form of ordinary hospitality. Neither does it apply to certain kinds of treating which exist in relation to business matters; it is not at all uncommon for persons when they have struck a bargain to cement it with a little drink, and it is obvious that the treating referred to in sect. 1 of the Act has no reference to treating of that sort. It applies in my judgment to that sort of treating which exists where the superior treats his inferior, the treating which gives the treater influence over the person treated, and secures to the former the good will of the latter; not, however, to all cases of this kind does the corrupt treating spoken of in the Act apply. It does not apply where the treating is in return for small services, as where a man may treat a railway guard or porter, or he may treat his own servants; nor does it apply where the object is to acquire general good will. It must have reference to some election, and it must be for the purpose of

influencing the vote of the person treated. What the object is in each particular case must depend upon the circumstances of the case."

The following are three of the most recent cases in which questions as to treating have arisen:—In the Aylesbury case <sup>5</sup> a sitting member, who had just announced himself as a candidate for the ensuing election, gave an entertainment called a school treat, which was attended by over 7000 persons, and at which wine, tea and cake were provided in tents, tickets for admission to which were distributed without reference to political considerations. It appeared that it had been the custom for some years previously to hold similar school treats. On the occasion in question, the number of persons present was considerably greater than it had been before, but that circumstance was accounted for in various ways. It was held that there was no "corrupt" intention on the part of the candidate, and that he had therefore not been guilty of treating. In the Hexham case, <sup>6</sup> the treasurer of a political association who expended sums in defraying expenses of picnics given by local political associations, was held to have been guilty of treating. In the Jiochester case <sup>7</sup> it was held to amount to treating, where refreshments were supplied at a conversazione under circumstances that the Court thought showed an intention to influence the election.

Undue Influence. — The definition of this offence contained in the Corrupt and Illegal Practices Prevention Act, 1883, <sup>8</sup> and incorporated with the present (1) 40 47 Vict. c. 51, s. 1. *Petition (Hill v. Peel)* (1869), 1 O'M.

(2) 17 18 Vict. c. 102, s. 4, now H. 75 at p. 82; S. C. 20 L. T. 181; repealed. *Loith Petition (Kirk v. Callan)* (3) *Per Blackburn, J.*, in the (1880), 3 O'M. H. 161.

*North Norfolk Petition (Cohnan v. (4) Norrich Petition (Dirlbeck v.*

*Walpoh )* (1869) 1 O'M. H. 236, at *Bidlard* (1886), 4 O'M. II. 81, at p. 242; 8. C. 21 L. T. 264; and see p. 91; 8. C. 54 L. T. 625.

*Beirdley Petition (Sturqe v. Glass)* (5) *Aylesbury Petition (Ckarsley)* (1869), 1 O'M. H. 16, at p. 19; *v. Rothschild* (1886), 4 O'M. H.

S. C. 19 L. T. 676; *Wallingford* 59.

*Petition (Dilke v. Vickars)* (1869), (6) *Hexham Petition (Hudspeth v.*

1 O'M. H. 57; 19 L. T. 766; *Clayton* (1892), 4 O'M. H. 143.

*Sta'ybridije Petition (Oidcn v. Side* (7) *Rochester Petition (Barry v.*

*bottom*) (1869), 1 O'M. H. 66, at *Davies* (1892), 4 O'M. H. 156.

p. 73; 8. C. 20 L. T. 75; *Tamworth* (8) 46 47 Vict. c. 51, s. 2.

47 48 Vict. Act is a re-enactment in but slightly altered language of the earlier defini-c. 70. tion contained in the Corrupt Practices Prevention Act, 185-i 1; the words

"temporal or spiritual" are new, but do not seem to effect any material alteration in the law.

The definition includes influence exercised by landlords over their tenants by threats of eviction, 2 by employers over persons employed by them by threats of dismissal, 3 or by customers over persons with whom they deal by threats to take away custom; 4 also the influence that priests or ministers of religion may exercise by working on the spiritual hopes and fears of voters. 5

In two cases a question has arisen whether the issue of cards similar to ballot papers, marked with a cross opposite the one candidate's name, and bearing a statement, that

if any voter marked his paper otherwise, the vote would-be lost, amounted to a "fraudulent device" within the meaning of the enactments defining undue influence; but in both cases it was held that there was no intention on the part of the person issuing the cards to mislead voters, and that what was done was therefore not an attempt to exercise undue influence. 6

In an Irish case, 7 one candidate published a statement to the effect that the secrecy of the Ballot Act could be infringed with impunity, and that he could ascertain how voters had voted, and the judges differed as to whether this was a "fraudulent device."

Briber. 8 With regard to the definitions of bribery incorporated with the Act, by this section, the following points may be noticed. It is no answer to a charge of bribery that the person whose vote it was attempted to influence was not entitled to vote, if he was on the register, and had therefore, a. prima facie right to vote. 8 The proviso to sect. 1 of the Act of 1854, is somewhat ill-expressed; it "refers no doubt to the various legal expenses incurred at elections, such as printing, messengers, hire of committee rooms. and expenses of that nature." 9 Apparently the mere offer on the part of a voter to sell his vote is not bribery. 10

It is to be observed that sect. 49 of the Representation of the People Act, 1867, 11 does not render it illegal to pay a person's rate in order to enable him ' (1) 17 18 Vict. c. 102, s. 5, now Fullam) (1892), 4 CM. H. 130; repealed. Forth Heath Petition (Hahony v.

(2) See North Norfolk Petition Davitt) (1892), 4 O'M. H. 185. (Colman v. Walpole) (1869), 1 O'M. (6) Gloucester Petition (Guise v. H. 236, per Blackburn, J., at p. 241; Walt) (1873), 2 O'M. H. 59; 5 C. 21 L. T. 264; Windsor Petition Stepney Petition Isaacson v. Durant) (Herbert v. Gardner) (1874), 2 O'M. (1886), 4 O'M. H. 34, at p. 55; 6 H. 88; 31 L. T. 133. 8. C. 54 L. T. 684 (3) See Westbury Petition (Laver (7) Down Petition (Hacartney v. ton v. Phipps) (1869), 1 O'M. H. Camereayh) (1880), 3 O'M. H. 115. 47 20 L. T. 16; Blackburn Petition (8) Guildford Petition (Elkins v. (Potter v. Hornby) (1869), 1 O'M. Onslow) (1869), 1 O'M. H. 13; 19 H 198 20 L T. 823. L. T. 729; Lichfield Petition (Anson '(4) Per Blackburn, J., in the v. Dyott) (1869), 1 O'M. H. 22; 20

North Norfolk Petition, vhl sup. Cf. L. T. 11.

Northallerton Petition (Johns v. Hut (9) Per Watson, B., in Cooper v. ton) (1869), 1 O'M. H. 166; 21 Slade (1858), 6 H. L. C. 746, at

L. T. 113, where it was held that a p. 764; S. C. 27 L. J. Q. B. 449; threat to give up a pew at a Noncon 4 Jur. N. S. 791; 6 W. R. 461. See formist chapel was undue influence. also per Bramwell, B., in that case, (5) See the Galway Petition 0 H. L. C. at p. 765, and the Coven- (Hcgovem v. St. Lawrence) (1869), try Petition (Berry v. Eaton) (1869), 1 O'M. H. 303; Longford Petition 1 O'M. H. 97, at p. 101; S. C. 20 (Broderick v. Greville Nugent) (1870), L. T. 405.

2 O'M. H. 6; Tipperary Petition (10) Hallow Petition (Knox v. (Mackay v. Heron) (1870), 2 O'M. Hunster) (1870), 2 O'M. H. 18, at H. 31; Galway Petition (Trench v. p. 21.

Nolan) (1872), 2 O'M. H. 46; (11) 30 31 Vict. c. 102, s. 49. '

South Heath Petition (Dalton v.



to be put on the register, unless the payment is made corruptly in order to 47 Si 48 Vict. influence his vote. 1 c. 70.

Questions naturally arise very frequently, especially before election courts, as to whether a particular transaction ostensibly innocent does not really amount to bribery. The more important decisions on such questions, which, are of course largely questions of fact, are very briefly summarised below.

Gifts made under colour of charity have been held to be bribes; 2 while bond fide charity or munificence, or lavish expenditure in the constituency, even though stimulated by the hope of securing popularity in view of a forthcoming election, has been held not to amount to bribery. 3

Formerly candidates commonly employed large numbers of persons as messengers, etc., in connection with elections, and questions frequently arose as to whether such persons were employed bond fide, or merely colourably, their wages being really bribes and not payment for services rendered. 4 Such questions are unlikely to arise in future, as the recent statutes impose rigid conditions on the employment of paid workers in connection with elections. 5

It has been held to be bribery, where the circumstances show an intention to influence votes, for an employer to give his workmen a holiday on polling day without docking their wages. 6 But in one case, where a holiday on full wages was given under circumstances that the Court thought negatived a corrupt intention, it was held that the employer had not been guilty of bribery. 7 Employers are now by a recent Act 8 enabled, subject to certain conditions, to permit their workmen to absent themselves for the purpose of polling at parliamentary elections without loss of wages; but that Act does not extend to municipal elections.

The payment of a voter's travelling expenses to or from the poll is bribery, if the payment is conditional upon his voting, but not otherwise. 9 (1) *Cheltenham Petition Gardner v. Samuelson* (1869) 1 O'M. H. 62; 19 L. T. 816; *Oldham Petition Cobbett v. Hibbert* (1869), 1 O'M. H. 151, at p. 164.

(2) *Boston Petition Malcolm v. Ingram* (1874), 2 O'M. H. 161; and see the sequel to that case, *Malcolm v. Parry*, L. R. 9 C. P. 610; 8. C. nam. *Malcolm v. Ingram*, 43 L. J. C. P. 331; 31 L. T. 331.

(3) *Windsor Petition Richardson Gardner v. Eykin* (1869), 1 O'M. H. at p. 2; S. C. 19 L. T. 613; *Westbury Petition Lara-ton v.*

*Phipps* (1869), 1 O'M. H. 47, at p. 49; S. C. 20 L. T. 16; *Hastings Petition Calthorpe v. Brassey* (1869), 1 O'M. H. 217; 21 L. T. 234; *Stafford Petition Chawner v. Meller* (1869), 1 O'M. H. 228; 21 L. T. 210; *Belfast Petition M'Tier. v. M'Clure* (1869), 1 O'M. H. 281; *Windsor Petition Herbert v. Gardner* (1874), 2 O'M. H. 88; 31 L. T. 133; *Plymouth Petition Latimer v. Pates* (1880), 3 O'M. H. 107; *Salisbury Petition Moore v. Kcn-nard* (1883), 4 O'M. H. 21, at p. 28.

(4) See *Tamworth Petition Hill v. Peel* (1869), 1 O'M. H. 75; 20 L. T. 181; *Penryn Petition Broad v. Fowler* (1869), 1 O'M. H. 127; *Durham Petition James v. Thompson* (1874), 2 O'M. H. 134; 31 L. T. 227; *Boston Petition Tunnard v. Ingram* (1880), 3 O'M. H. 151; 44 L. T. 287; *Oxford Petition Green v. Hall* (1880), 3 O'M. H. 155; *Salisbury Petition Moore v. Kcn-nard* (1883), 4 O'M. H. 21.

(5) Corrupt and Illegal Practices Prevention Act, 1883 (46 47 Vict. c. 51), s. 17; and, as to municipal elections, s. 13 of the present Act.

(6) Gravesend Petition Truscott v. Bevan) (1880), 3 O'M. H. 81; 44 L. T. 04.

(7) Stroud Petition Baynes v. Stanton) (1874), 2 O'M. H. 181.

(8) Parliamentary Elections Corrupt Practices Act, 1885 (48 49 Vict. c. 56). As to the payment of wages since the passing of that Act, see Aylesbury Petition Charsley v. Rothschild) (1886) 4 O'M. H. 59.

(9) Cooper v. Slade (1858), 6 H. L. C. 746; 27 L. J. Q. B. 449; 4 Jur. N. S. 791; 6 W. Pv. 261; Lichfield Petition Anson v. Dyott) (1869), 1 O'M. H. 22, at p. 28; S. C. 20 L. T. 11; Coventry Petition Berry v. Eaton) (1869), 1 O'M. H. 97. r. t pp. 105, 109; S. C. 20 L. T. 405; Northallerton Petition Johns v. Button) (1869), 1 O'M. H. 167; Dublin Petition Woodlock v. Guinness) (1869), 1 O'M. H. 270; Bolton Petition Ormcrod v. Crcs) (1874),

#### Appendix I.

47 48 Vict. c. 70.

Incapacity of candidate reported guilty of corrupt practice. 45 46 Vict. " c. 50.

The payment of such expenses is now in any case illegal payment. 1

Where A. undertook, if B. would stand jointly with him for a constituency, to defray B.'s expenses, but it did not appear that A.'s offer was really an attempt to purchase B.'s influence, the Court held that the arrangement was legal. 2 And there is nothing per se illegal in contributing towards a candidate's expenses. 3

It was held that bribery at a test ballot held to determine who, among three candidates belonging to the same party, should ultimately contest an election, was bribery with reference to the ultimate election. 4

The following are further instances of forms that bribery has taken:â An offer to remunerate a voter for loss of time in going to vote; s payments made under colour of remuneration for loss of time in attending the revising barrister's court, 6 though payments bond fide made for a like purpose have been held to be legal; 7 payment of a voter's debt in order to get him out of custody and enable him to vote: 8 an offer to vacate a seat on a town council in favour of a voter; 9 permission to shoot rabbits on a candidate's property; 10 colourable hiring of committee rooms. 11

Personation. â The essence of this offence is the fraudulent intention; it is not personation where a person votes erroneously honestly believing himself entitled to vote. 12

False Declaration as to Election Expenses. â By sect. 21 (5) a candidate who knowingly makes a false declaration as to his election expenses, is guilty of a corrupt practice; that offence must therefore be added to the list of corrupt practices in the present section as regards municipal elections. The section, however, does not apply to elections under the Local Government Act, 1894.

Consequences of Conviction for Corrupt Practices. â With regard to the punishment of persons guilty of corrupt practices and the incapacities arising from conviction of such offences, see sects. 28 (4) 31, post, and the Corrupt and Illegal Practices Prevention Act, 1883, sect. 6. 1S

Sect. 3.â (1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an election court

made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent 2 O'M. H. 138; 31 L. T. 194; *Horsham Petition* (*Aldridge v. Hurst*) (1876), 3 O'M. H. 52; *Harwich Petition* (*Tomline v. Tyler*) (1880), 3 O'M. H. 61, at p. 64; S. C. 44 L. T. 187.

(1) *Corrupt and Illegal Practices Prevention Act, 1883* (46 47 Vict. c. 51), s. 7, and see ss. 13, 14; and, as to municipal elections, s. 4 of the present Act, and see ss. 9, 10.

(2) *Coventry Petition* (*Berry v. Eaton*) (1869). 1 O'M. H. 97; 20 L. T. 405.

(3) *ib.*; *Belfast Petition* (*M'Tier v. M'C'lure*) (1869), 1 O'M. H. 281.

(4) *Britt v. Eobinson* (*Bristol Petition*) (1870), L. R. 5 C. P. 503; 39 L. J. C P. 265; 23 L. T. 188; 18 W. R. 866.

(5) *Simpson v. Yccnd* (1869), L. R.

4 Q. B. 626; 38 L. J. Q. B. 313; 21 L. T. 56; 17 W. R. 1100; 10 B. S. 752.

(6) *Taunton Petition* (*Mellor v. Cox*) (1869), 1 O'M. H. 181; 21 L. T. 169.

(7) *Hastings Petition* (*Calthorpe v. Brassey*) (1869), 1 O'M. H. 217; 21 L. T. 231.

(8) *Londonderry Petition* (*Gowan v. Bowse*) (1869), 1 O'M. H. 274.

(9) *Waterford Petition* (*Condon v. Osborne*) (1870), 2 O'M. H. 24.

(10) *Launceston Petition* (*Brink-water v. Beakin*) (1874), 2 O'M. H. 129; 30 L. T. 823.

(11) *Sandwich Petition* (*Goldsmid v. Roberts*) (1880), 3 O'M. H. 158.

(12) *Atidone Petition* (*Shiel v. Ennis*) (1880), 3 O'M. H. 57; *Stepney Petition* (*Isaacson v. Durant*) (1886), 4 O'M. H. 34, at p. 43; S. C. 54 L. T. 684; *Finsbun Petition* (*Penton v. Naorajt*) (1892), 4 O'M. H. 171.

(13) 46 47 Vict. c. 51, s. 6, ante.

of any candidate at such election, or that the offence of treating or undue 47 48 Vict.

influence has been proved to have been committed in reference to. such c. 70.

an election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subjected to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Note. Report of Election Court. With regard to this report, see sect. 93 of the Municipal Corporations Act, 1882, 1 and the note to that section, ante.



Incapacities. As to the incapacities resulting from conviction of corrupt practices, see sects. 28 (4) 31, and the Corrupt and Illegal Practices Prevention Act, 1883, sect. 6. 2 As to incapacities resulting from the report of an election court, that a person has been guilty of corrupt practices, see further the portions of the same Act 3 referred to in sect. 23 of the present Act.

The report of an election court in order to entail any incapacity upon a person whose conduct is reported on, must definitely state that such person has been guilty; it is not sufficient if it merely states facts from which guilt may be inferred. 4

#### Illegal Practices.

Sect. 4. (1.) No payment or contract for payment shall, for the purpose Certain expendi-â of promoting or procuring the election of a candidate at a municipal ture to be illegal election, be madeâ practice.

(a.) on account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages, or for railway fares, or otherwise; or (o.) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or i(e.) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand. (2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be iu contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an (1) 45 46 Vict. c. 50, s. 93. (1877) 3 C. P. D. 80; 47 L. J. C. P.

(2) 4G 47 Vict, c. 51, s. 6, ante. 59; 37 L. T. 404; 26 W. K. 169 (3) lb., ss. 37, 38. 2 Hopw. C. 358.

(4) Grant v. Pagham (overseers)

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47 48 Vict, advertising agent to exhibit for payment bills and advertisements, a pay-c. 70. ment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

Note. Conveyance of Electors. â Sect. 10 makes further provisions as to the conveyance of electors to and from the poll.

Committee Room. â For a definition of this expression, see sect. 64 of the Corrupt and Illegal Practices Prevention Act, 1883. 1

Exceptions. â As to the exception referred to in sub-sect. (2), see sects. 19 and 20. Sect. 5.â Expense in excess of maximum to be illegal practice."

Note. Election Expenses. â The present section imposes a limit on the expenses that may be incurred in connection with candidature for the office of councillor of a borough; and forbids the incurring of any expense in connection with candidature for any other corporate office in a borough. It does not apply to elections under the Local Government Act, 1894. 2

Voting by pro- Sect. 6.â (1.) If any person votes or induces or procures any person to hibited persons yote a f. a mx micipal election, knowing that he or such person is prohibited, se tetemems whether by this or any other Act, from voting at such election, he shall of withdrawal toi be guilty of an illegal practice, be illegal. (2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.

Note. Persons Prohibited from Voting. â As to persons prohibited by statute from voting at a municipal election, see the note to sect. 100 of the Municipal Corporations Act, 1882, 3 ante.

Sect. 7. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds, and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or withiu the borough in which the illegal practice has been committed.

Note.â Illegal Practices. â As to what are " illegal practices," see sects. 4 f 5 (2), 6, 14, 17, 21, 36 (1, g). j m."-,

The same proceeding may obviously be at once an illegal practice and a corrupt practice; and it is expressly provided, 4 that a person charged with an illegal practice may be convicted of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice.

Indictment. â Though an illegal practice is not, generally speaking, an indictable offence, a person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of any illegal practice, which offence is for that purpose to be an indictable offence. 5

Excuse for Illegal Practice. â Under sects. 19, 20 and 21, the Courts have certain powers for relieving persons against the consequences of illegal practices.

Punishment on conviction of illegal practice.

(1) 46 47 Vict. c. 51, s. 64, ante.

(2) 56 57 Vict. c. 73, s. 48 (3); and see s. 37 of the present A ct.

(3) 45 46 Vict. c. 50, s. 100.

(4) Corrupt and Illegal Practices Prevention Act, 1883 (46 47 Vict. c. 51), s. 52, ante, incorporated with the present Act by s. 30, post.

Sect. 8.â (1.) An illegal practice within the meaning of this Act shall 47 48 Vict. he deemed to be an offence against Part Four of the Municipal Corpora c. 70.

tions Act, 1882, and a petition alleging such illegal practice may be incapacity of presented and tried accordingly. candidate re- (2.) Upon the trial of an election petition respecting a municipal ported guilty of election for a borough or ward of a borough in which a charge is made of "" j V'y' " any illegal practice having been committed in reference to such election, Ci 5 y. the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

Note. Municipal Corporations Act, 1882.â Portions of this Act, 1 including Part IV. are set out, ante.

Report of Election Court. â As to this report, see sect. 93 of the Act above mentioned,- and the note to that section.

Illegal Payment, Employment, and Hiring.

Sect. 0. Where a person knowingly provides money for any payment Providing of which is contrary to the provisions of this Act, or for any expenses incurred j cuce or pay?" in excess of any maximum amount allowed by this Act, or for replacing mentto be illogii any money expended in any such payment, except where the same may payment. have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

Note. Illegal Payment. â The provisions of the Act as to the maximum amount of election expenses will not apply to elections under the Local Government Act, 1894. 3 As to the consequences of illegal payment, see sects. 17, 18, 22.

Exception. â As to the exception referred to, see sects. 19, 20.

Sect. 10.â (1.) A person shall not let, lend, or employ for the purpose Employment of of the conveyance of electors to or from the poll at a municipal election, haelm-eycarriagea any public stage or hackney carriage, or any horse or other animal kept or and horse kept used for drawing the same, or any carriage, horse, or other animal which for hire he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.



(4.) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

(1) 45 46 Vict. c. 50. (3) 56 57 Vict. c. 73, s. 48 (3), (2) lb. s. 93. and see sect. 37 of the present Act.

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47 48 Vict. Note. Illegal Hiring. â As to the consequences of this offence, see c. 70. sects. 17, 18, 22.

Conveyance of Electors. â For further provisions as to the conveyance of electors to or from the poll, see sect. 4.

Corrupt withdrawal from a candidature.

Certain expenditure to be illegal payment.

Certain employment to be illegal.

Sect. 11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

Note. Illegal Payment. â As to the consequences of this offence, see sects. 17, 18, 22.

Sect. 12.â (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

Note. Banners. â In the Stepney case, 1 broad strips of canvas bearing the words " Isaacson for Stepney," and stretched across the streets, were held to be banners.

Marks of Distinction. â Hat cards made expressly to be worn in the hat have been held to be marks of distinction, 2 but the opposite view was taken in an Irish case as to cards not made for that purpose, though in fact to some extent worn as hat cards. 3

Illegal Payment. â As to the consequences of this offence, see sects. 17,

Exception. â As to the exception referred to in sub-section (2), see sects.

Sect. 13.â (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say), (a.) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and (6.)

one polling agent may be employed in each polling station: Provided that this section shall not apply to any engagement or employment for carrying into effect a contract bond fide made with any person in the ordinary course of business.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

(1) Stepney Petition (*Isaacson v. Durant*) (1892), 4 O'M. H. 178.

(2) Walsall Petition (*Hately v. James*) (1892), 4 O'M. H. 123.

(3) East Clare Petition (*Cox v. Redmond*) (1892), 4 O'M. H. 162; and see Pontefract Petition (*Shaw v. Peckitt*) (1893), 4 O'M. H. 200.

(3.) A person legally employed for payment under this section may or 47 48 Vict. may not be an elector, but may not vote. c- 7.

Note. Illegal Employment. â As to the consequences of this offence, see sects. 17, 18, 22.

The expression payment is defined in the Corrupt and Illegal Practices Prevention Act, 1883j 1 and under that definition it was held that persons employed in connection with an election who were given refreshments, but no money, were employed for "payment." 2

Exception. â As to the exception referred to in sub-section (2), see sects. 19, 20.

Sect. 14. Every bill, placard, or poster having reference to a municipal Name and election shall bear upon the face thereof the name and address of the â pi niâ printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Note. Illegal Practice. â As to the consequences of this offence, see wets. 7, 8, 22.

Causing placard, c, to be printed. â Where B. was a candidate at an election, and it was found that A. had received from his own servant at his residence a printed address and letter having reference to the election, and purporting to be signed by B. without the printer's name and address; that the document was printed for publication under instructions conveyed to the printer by B.'s brother, who resided with him; and that the printer had debited B. with the cost of printing the bill, but had not been paid: it was held that there was no evidence that B. had caused the document to be printed. 3

Sect. 15. The provisions of this Act prohibiting certain payments and Saving for contracts for payments, and the payment of any sum, and the incurring of creditors. any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense-was incurred, was ignorant of the same being in contravention of this Act.

Sect. 1Gâ (1.) (a.) Any premises, which are licensed for the sale of any Use of certain intoxicating liquor for consumption on or off the premises, or on which r ' rei t s brooms refreshment of any kind (whether food or drink) is ordinarily sold for â â â â eting9 10 consumption on the premises, or illegal hiring.

(6.) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises, shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

(1) 46 47 Vict. c. 51, s. 64, O'M. H. 76: 54 L. T. 168. applied to the present Act by s. 34, (3) *Bettesworth v. Allinham* post. (1885), 16 Q. B. D. 44; 34 W. K.

(2) *B'arrow-in-Fixriness* Petition 296; 50 J. P. 55. *Schneider v. Duncan* (1886), Appendix I.

47 48 Vict, c. 70.

Punishment of illegal payment, employment, or tiring.

Avoidance of election for extensive illegal practices, c.

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

Note. Illegal Hiring. â As to the consequences of this offence, see sects. 17, 18, 22.

Sect. 17.â (1.) A. person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.

Note. Offences â As to illegal payment, see sects. 9, 11, 12; as to illegal employment, see sect. 13; as to illegal hiring, see, sects. 10, 16.

Illegal Practice. â As to the consequence of this offence, see sects. 7, 8, 22.

Sect. 18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough.

Note. Illegal Practice, Payment, 4'c. â As to these offences, see the note to sect. 17.



Report of Election Court. â As to this report, see sect. 93 of the Municipal Corporations Act, 1882, 1 and the note to that section, ante.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

Sect. 19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the courtâ (a.) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and (b.) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and (c.) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and (d.) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents; then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

Note. Exoneration of Candidate. â It should be observed that the Court has no power to relieve a candidate against any corrupt practice committed by his agent, except treating and undue influence. If, therefore, a candidate's agent has been guilty of even the most trivial act of bribery the Court is bound to avoid the election.

'1) 43 46 Vict. c. 50, s. 93.

For an instance in which an election court refused to exonerate a candidate 47 48 Vict, under the corresponding section of the Corrupt and Illegal Practices Prevention Act, 1883," on the ground that all reasonable means for preventing the commission of corrupt and illegal practices had not been taken, see the case-cited below.

2

See also sect. 20, and the note to that section.

' Sect. 20. Where, on application made, it is shown to the High Court or Power of High to a municipal election court by such evidence as seems to the Court n'court t 0 ec " Sufficientâ except innocent (a.) that any act or omission of a candidate at a municipal election for act from being a borough or ward of a borough, or of any agent or other person, illegal practice, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and (6.) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and (c.) that such notice of the application has been given via the said borough as to the Court seems lit; and under the circumstances it seems to the Court to be just that the said â candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise

make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Note. Belief against consequences of offences. â Notice of an intended application for relief should be given to the opposing candidate or candidates and to the returning officer, and should be given to the constituency by means â of placards posted in the district and advertisements in the local papers; but no notice need be given to the Attorney-General."

Where an application was made under the present section by a successful candidate and it appeared that a petition had been presented against him and was pending, the Court ordered the application to stand over until the trial of the petition. 4

An appeal lies to the Court of Appeal from the decision of the Queen's Bench Division on an application under this section. 5

For instances of applications under the present section, see, in addition to the cases already cited, those cited below. 0

Reference may also be made to the cases cited below, 7 and to the case cited in the note to sect. 19.

Sect. 21. Sending in claims and making payments for election expenses."

(1) 46 47 Vict. c. 51, s. 22. L. T. 260; Darlington, ex parte (2) Rochester Petition (Barry v. (1889), 53 J. P. 71; Thomas, ex Davis) (1892), 4 O'M. H. 156. parte (1889), 60 L. T. 728.

(3) Lenanton, ex parte (1889), (7) Ex parte Bobson (1886), 18 53 J. P. 263; Berry, ex parte (1884), Q. B. D. 336; 55 L. T. 813; 35 48 J. P. 824; Cf. re South Salop W. R. 290; 51 J. P. 199; Stepney election (1886), 54 L. T. 129. Betition (Isaacson v. Durant) (1886), (4) Witts, ex parte (1885), 16 4 O'M. H. 34, at p. 52; Buckrose â Q. B. D. 114; 55 L. J. Q. B. 576; Petition (Sykes y. Mcarthur) (1886), 50 J. P. 487. 4 O'M. H. 110; Walsall Betition, (5) Walker, ex parte (1889), 22 (Hately v. James) (1892), 4 O'M. Q. B. D. 384; 58 L. J. Q. B. 190; H. 123; Stepney Petition (Bash-60 L. T. 581; 37 W. R. 293; 53 J. P. mere v. Isaacson) (1892), 4 O'M. 260. H. 178.

( 5) Clark, ex parte (1885), 47 48 Vict. Note. Election Expenses. â The present section requires all claims in

C. 70. respect of expenses incurred by or on behalf of a candidate at an election of a councillor to be sent in, and all such expenses to be paid, within a given time, and requires a return and declaration as to such expenses to be made. It does not apply to elections under the Local Government Act, 1894.

Disqualification of Electors.

Prohibition of Sect. 22. Every person guilty of a corrupt or illegal practice or of offoff" BSU f ly illegal employment, payment, or hiring at a municipal election is pro-voting, hibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

Note. Scrutiny. â As to a scrutiny, see the note to sect. 100 of the Municipal Corporations Act, 1882, 2 ante. As to striking off votes affected by corrupt practices, c, see also sect. 88 of that Act, 3 and the note to that section.

Application of Sect. 23. So much of sections thirty-seven and thirty-eight of the s-  
f 38 of 46 Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part  
47 Vict, c 51. Two of the Third Schedule to this Act, shall apply as part of this Act.

List in burgrss Sect. 24.â (1.) The town clerk in every municipal borough shall

Toll of persons annually in July make out a list containing the names and description  
of voting by corrupt a persons who, though otherwise qualified to be enrolled as  
burgesses of or illegal prac- such borough, have under this Act, or under the Corrupt  
and Illegal tices ' Practices Prevention Act, 1883, or under any other Act for the time  
being in force relating to a parliamentary election or an election to any public office,  
become after the commencement of this Act, by reason of conviction of a corrupt  
or illegal practice, or of the report of any election court or election commissioners,  
incapable of voting at a municipal election in such borough or any ward thereof, and  
the town clerk shall state in the list (in this Act referred to as the coirrupt and illegal  
practices list), the offence of which each i erson has been found guilty.

(2.) For the purpose of making out such list he shall examine the report of any  
election court or election commissioners who have respectively tried an election  
petition or inquired into an election where the election (whether a parliamentary  
election or an election to any public office) was held in the said borough or in the  
county in which such borough is situate.

(3.) The town clerk of any municipal borough shall, not less than fourteen days  
before the first day appointed by law for the publication of the parish burgess lists  
in such borough, seud the corrupt and illegal practices list to the overseers of every  
parish wholly or partly within the-borough, and the overseers shall publish that list  
together with the parish burgess lists, and shall also, in the case of every person in the  
corrupt and illegal practices list, omit his name from the list of persons entitled to be  
enrolled as burgesses or to be elected councillors, or, as circumstances require, add "  
objected " before his name in the list of claimants published by them, in like manner  
as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have  
his name omitted thee from, and any person entitled to object to any parish burgess list  
may object to the omission of the name of any person from such first-mentioned list.  
Such claims and objections shall be sent in within the same time and be dealt with in  
like manner, and any such objection shall be served on the person referred to therein  
in like manner, as nearly as circumstances admit, as other claims and objections under  
the enactments relating to the enrolment of burgesses.

(5.) The revising authority shall determine such claims and objections and shall  
revise such list in like manner, as nearly as circumstances- (1) 56 57 Vict. c. 73, s. 48  
(3); (2) 45 46 Vict. c. 50, s. 100.

and see s. 37 of the present Act. (M) lb. s. 88.

admit, as in the case of other claims and objections and of any parish 47 48 Vict,  
burgess list and list of persons entitled to be elected councillors. c. 70.

(0.) Where it appears to the revising authority that a person not named in the list  
is subject to have his name inserted in the corrupt and illegal practices list, he shall  
(whether an objection to the omission of such name from the list has or has not been  
made, but) after giving such person an opportunity of making a statement to show



cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7.) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the Bame is printed or published.

(9.) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-live of the Municipal Corporations Act, 1882, for 45 46 Vict, any neglect or refusal in relation to a parish burgess list as therein c- 50-mentioned.

#### Proceedings on Election Petitions,

Sect. 25.â (1.) A municipal election petition complaining of the elec- petition for tion on the ground of an illegal practice may be presented at any time illegal practice, before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is au authorised excuse for failing to make the return and declaration then withiu the like time after the date of the allowance of the excuse.

(2.) A municipal election petition, complaining of the election on the Time for prr- ground of an illegal practice, and specifically alleging a payment of money sentation of or other act made or done since the election by the candidate elected at K' 1,"? 11 all j? in s such election, or by an agent of the candidate, or with the privity of the l esa prac ICCS ' candidate, in pursuauce or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of 45 46 Vict, the election upon an allegation of an illegal practice, be amended with c. 50. the leave of the High Court within the time within which a petition complaining of the election on the grouod of that illegal practice can, under this section, be presented.

(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

Note. Time for presenting Petition. â As to the time limited for the presentation of a petition in ordinary cases, see sect. 88 of the Municipal Corporations Act, 1882, 1 ante.

Declaration respecting Election Expenses. â No such declaration is required in the case of an election to which the present Act is applied by the Local Government Act, 1894. 2

Sect. 2G.â (1.) Before leave for the withdrawal of a municipal election withdrawal of petition is granted, there shall be produced affidavits by all the parties to election petition, the petition and their solicitors, but the High Court may on cause shown

dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge- (1) 45 46 Vict. c. 50, s. 88.

(2) 56 57 Vict. c. 73, s. 48 (3), and see sect. 37, post.

Appendix I.

47 48 Vict, c. 70.

Attendance of Director of public prosecutions on trial of election petition, and prosecution by him of offenders.

I believe and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of public prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration.

(7.) In every case of the withdrawal of an election petition, by leave of the election court such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

Note. Withdrawal of Petition. â As to the withdrawal of a petition, see sect. 95 of the Municipal Corporations Act, 1882, 1 and the note to that section, ante.

Director of Public Prosecutions. â The duties of this official are now discharged by the Solicitor to the Treasury. 2

Sect. 27. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued de die in diem on every lawful day until its conclusion.

Sect. 28.â (1.) On every trial of a municipal election petition the director of public prosecutions shall by himself or by his assistant, or by such representative as herein-after mentioned, attend at the trial, and it shall be the duty of such director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

d) 45 46 Vict. c. 50, s. 88.

(2) Prosecution of Offences Act, 1884 (47 48 Vict. c. 58).

(2.) It shall also be the duty of such director, without any direction 47 48 Vict, from the election court, if it appears to him that any person is able to c. 70.

give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in



either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named. (6.) Upon such order being made, a.) if the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and (b.) if the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and (c.) if the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882. 45 4G Vict.

(8.) The director of public prosecutions may nominate, with the c-50-approval of the Attorney-General, any barristers or solicitors of not less than ten years standing, one of whom shall, when required, act as the

#### Appendix I.

45 46 Vict. c. 50.

47 48 Vict, representative for the purposes of this section of such director, and when so acting shall receive such remuneration as the treasury may approve. There shall be allowed to the director and his assistant or representative, for the purposes of this section, such allowance for expenses as the treasury may approve.

(9.) The costs incurred in defraying the expenses of the director of public prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the treasury by the parties to the petition, or such of them as the court may direct.

Note. Director of Public Prosecutions. â As to the duties of this official, which are now discharged by the Solicitor to the Treasury, 1 see sect. 26, and sects. 45, 53 and 57 of the Corrupt and Illegal Practices Prevention Act, 1883. 2 As to the duties of the representative of the director of public prosecutions at the trial of an election petition, see the cases cited below. 3

Costs of Director of Public Prosecutions. â In the case of a parliamentary petition, which was utterly unfounded, the petitioner was ordered to pay these costs

Prosecution before Election Court. â As to the prosecution of offences before an election court, see sect. 30 and the note to that section.

Prosecution ordered by Election Court. â As to the form of an order of an election court for an indictment, see the case cited below. 5 The " evidence " which under sub-sect. (5) is to satisfy the Court before it makes an order, means the evidence given during the trial of the petition. An election court has therefore jurisdiction, after giving judgment on a petition, to order the prosecution of a person, without re-hearing the evidence affecting him. 6

Power to election Sect. 29.â (1.) Where upon the trial of a municipal election petition it court to ordor appears to the election court that a corrupt practice has not been proved bonm h'or in- to nave keen committed in reference to the election by or with the dividual of costs knowledge and consent of the respondent to the petition, and that such of election respondent took all reasonable means to prevent corrupt practices being petition. committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows; (a.) if it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough; and (b.) if it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such (1) Prosecution of Offences Act, 1884 (47 48 Vict. c. 58).

(2) 46 47 Vict. c. 51, ss. 45, 53, 57, ante.

(3) Stepney Petition (*Isaacson v. Durant*) (1886), 4 O'M. H. 34, at p. 36; S. C. 54 L. T. 684; Buck-rose Petition (*Sykes v. Mearthur*) (1886), 4 O'M. H. 110, at p. 115; Walsall Petition (*Hately v. James*) (1892), 4 O'M. H. 123; Hexham Petition (*Hudspeth v. Clayton*) (1892), 4 O'M. H. 143; Rochester Petition (*Barry v. Davis*) (1892), 4 O'M. H. 156; Montgomery Petition (*George v. Pryce-Jones*) (1892), 4 O'M. H. 167.

(4) Kennington Petition (*Cross-man v. Gent-Davis*) (1886), 4 O'M. H. 93; 54 L. T. 628.

(5) *Reg. v. Riley* (1890), 59 L. J. M. C. 122; 55 J. P. 21; S. C. nom. *Reg. v. Ripley*, 63 L. T. 119; 17 Cox C. C. 120.

(6) *Reg. v. Shellard* (1889), 23 Q. B. D. 273; 58 L. J. M. C. 142 â, 61 L. T. 120; 37 VV. R. 706.

election, the court may, after giving such person or persons an 47 48 Viut. oppoitu- nity of being heard by counsel or solicitor and of c. 70.

examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of tho costs to bo paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be pidd by some other of such persons or by either of the parties to the petition. (2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not he made,

order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct.

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petitions in and other proceedings under Part Four of the Municipal 45 46 Vict. Corporations Act, 1882, and this Act, and the taxing officer shall not c- 50-allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause or matter in the High Court on the higher scale as between solicitor and client.

Note. Costs of Election Petition. â As to these costs, see sects. 98 and 101 of the Municipal Corporations Act, 1882. 1

Taxation of costs. â As to the taxation of costs on election petitions, reference may be made to the cases cited below. 3

Miscellaneous.

Sect. 30. Subject to the other provisions of this Act, the procedure for General provi-the prosecution of a corrupt or illegal practice or any illegal payment, em- sions as to prose- ployment, or hiring committed in reference to a municipal election, and under this Actf" the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the director of public prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, 46 47 Vict. shall apply accordingly as if they were re-enacted in this Act with the c-51-necessary modifications, and with the following additions:â (a.) Where the director of public prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence (1) 45 46 Vict., c. 50, ss. 98, C. L. 445; 21 W. R. 640; Fleming 101, ante. v. Cave (Barnstaple Petition) (1875), (2) Hilly. Peel (Tamworth Peti 44 L. J. C. P. 200; 32 L. T. 160; Hon), Broad v. Fou-ler (Penrhyn Peti Hargreaves v. Scott (1878), 4 C. P. D. tion), Pegler v. Gurney (Southamp 21; 40 L. T. 35; 27 W. R. 323; ton Petition) (1870), L. R. 5 C. P. McLaren v. Home (Berwick-upon-172; 39 L. J. C. P. 89; Tillott v. Tweed Municipal Petition) (1881), Stracei (Norwich Petition) (1870), 7 Q. B. D. 477; 50 L. J. Q. B. 658; L. R. 5 C. P. 185; 39 L. J. C. P. 93; 45 L. T. 350; 30 W. R. 85; 46 J. P. 22 L. T. 101; 18 W. R. 631; Hughes 85; Kennington Petition (Grossman x. Meyrick (Pembroke Petition) v. Gent-Dai is) (1886), 4 O'M. H. (1870), L. R. 5 C. P. 407; 39 93; Hexham Petition (Hudspeth v. L. J. C. P. 249; 22 L. T. 482; Clayton) (1892), 4 O'M. H. 143, 18 W. R. 806; Trench v. Nolan at p. 151.

(Galway Petition) (1873), 7 Ir. R.

Appendix I.

45 46 Vict, c. 50.

Person incapacitated by conviction or report to vacate seat or office.



Payment and recovery of costs, 47 St 48 Vict. other than a corrupt practice committed in reference to a c- 70. municipal election in any borough, he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and (b.) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections; and (c.) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive.

Note. Incorporated enactments. â The sections of the Corrupt and Illegal Practices Prevention Act, 1883, (46 and 47 Vict. c. 51) referred to in the present section are set out, ante.

Sect. 31. If any person, in consequence of conviction or of the report of an election Court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office, and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his scat or office, as the case may be, shall be vacated as from that date.

Note. Incapacities by reason of Conviction or Eeport. â With regard to these, see sects. 2 (2), 7, 8 (2), 28 (4).

Sect. 32.â (.) "Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate.

(2.) Where any costs or other suins are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

Note. Costs. â As to the costs of an election petition, see sects. 28 (9), 29 and the Municipal Corporations Act, 1882, sects. 98 and 101."

Sect. 33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

Sect. 34.â In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by

the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.

Service of notices

Definitions.

45 46 Vict.

46 47 Vict. C. 51.

(1) 45 46 Vict. c. 50, ss. 98, 101, ante.

For the purposes of this Act the number "of electors shall be taken 47 48 Vict. according to the enumeration of the electors in the burgess roll. c. 70.

Note. Definitions. â Definitions are contained in sects. 7 and 77 of the Act of 1882, 1 and in sect. 64 of the Act of 1883. 2

Sept. 35. Application to city of London of Act and of Part IV. of 45 (t 46 Vict, c 50.

Application of Act to other elections.

Sept. 36.â (1.) Subject as hereinafter mentioned, the provisions of this Application of Act and of Part Four of the Municipal Corporations Act, 1882, as tua Art and amended by this Act, shall extend to elections for the offices mentioned vkb' oto in the first column of the First Schedule to this Act as if re-enacted oi- er election's. herein and in terms ma le applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election: (a.) The area, officer, and rate mentioned opposite to the office in the second, third, and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively. (b.) The expression "corporate office" in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union, and a "municipal election" shall mean an election to such office, and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly. (c.) No corrupt and illegal practices list shall be made for any such election, (d.) Vacancies created by the decision of an election court shall be filled by a new election, (e.) A petition relating to the election of a guardian of a union may be tried at any place within the union. (.) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district or in the Metropolis; (g.) Where the poll at any election to an office in the said schedule is taken by means of voting papers, such of the said provisions as relate to personation, polling agents, disclosure of votes and conveyance of voters, shall nut apply; but any offence in relation to voting papers or to personation or to voting at such election which is punishable on summary conviction (that is to say,) the offences mentioned in section three of the Poor Law Amendment u k 15 Vict Act, 1851, and in rule sixty-nine of Schedule Two to the Public c-105-Health Act, 1875, shall, without prejudice to the

punishment j! 8 5 5, 39 ict " under such section and rule of a person guilty of such offence, be deemed to be an illegal practice within the meaning of the said provisions.

(2.) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part Four of the Municipal Corporations Act, 1882, and this Act, and (1) 45 46 Vict. c. 50, ss. 7, 77, (2) 46 47 Vict. c. 51, s. 64, ante. ante.

#### Appendix I.

47 48 Vict, shall from time to time assign the petitions (whether relating to a c. 70. municipal election or to any other election to which this Act extends) to be tried by each commissioner.

Note. Repeal. â The omitted portion of the section which preserved, subject to some limitations, the powers of the Local Government Board to decide questions as to elections of guardians is expressly repealed by sect. 89 of the Local Government Act, 1894. The remainder of sub-sect. (1) would appear, together with the First Schedule, to be impliedly repealed by that Act except as regards school boards. Any doubt on this point may perhaps be cleared up by the rules to be framed by the Local Government Board.

Exemption from provisions as to maximum expenses.

Sect. 37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act.

Note. Application of section. â The present section is applied to elections under the Local Government Act, 1894, by sect. 48 (7) of that Act.

Sect. 38. Repeal of Acts."

Repeal.

Note. Repealed Enactments. â The enactments repealed by the present section are specified in the second schedule. They are sect. 33 of the Elementary Education Act, 1870. 1 and portions of Part IV. of the Municipal Corporations Act, 1852. 2

Sect. 39. Commencement of Act.

Act not to extend to Scotland or Ireland.

Duration of Act.

Extent of Act.

Sect. 40. This Act shall not extend to Scotland or Ireland. Sect. 41. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer.

Note. Continuance of Act. â The Act is at present continued in force by the Expiring Law Continuance Act, 1893. 3 (1) 33 34 Vict. c. 75. (2) 45 46 Vict. c. 50. (3) 56 57 Vict. c. 59.

47 48 Vict, c. 70.

SCHEDULES.

FIRST SCHEDULE.



## Section 36.

Elections to which this Act Extends. In England.

Note. Repeal. â This schedule, except so far as it relates to school boards, appears to be impliedly repealed by the Local Government Act, 1894.

## SECOND SCHEDULE.

Note. Repeal â This schedule contains a list of repealed enactments. These enactments are mentioned in the note to sect. 38.

48 Vict. c. 70.

## THIRD SCHEDULE.

### Part I.

section 2. enactments defining corrupt practices.â enactments defining thk  
Offence of Bribery.

The Corrupt Practices Prevention Act, 1854, 17 18 Vict. c. 102, sects. 2 and 3.

Bribery defined. Sect. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:â (1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for 1 on account of any legal expenses bond fide incurred at or concerning any election.  
Bribery further Sect. 3. The following persons shall also be deemed guilty of bribery,

and defined. shall be punishable accordingly:â (1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person, for voting or agreeing to vote, or from 2 refraining or agreeing to refrain from voting at any election.

(1) The word "or" occurs here (2) "For " in the Queen's Printers' in the Queen's Printers' copies of the copies of the Act of 1854. Act of 1854.

(2.) Every person who shall, after any election, directly or indirectly, by 47 48 Vict, himself or by any other person on his behalf, receive any money or c. 70.

valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The presentation of the People Act, 1867, 30 31 Vict. c. 102, s. 49.

Sect. 49. Any person, either directly or indirectly, corruptly paying any rate Corrupt payment on behalf of any ratepayer for the purpose of enabling him to be registered as of rates to be a voter, thereby to influence his vote at the future election, and anyÂ candidate P u. nis r hable as or other person, either directly or indirectly, paying any rate on behalf of any " ery " voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

Enactment Defining the Offence of Personation.

The Ballot Act, 1872, 35 36 Vict. c. 33, s. 24.

Sect. 24. A person shall, for all purposes of the laws relating to parliamentary Personation and municipal elections, be deemed to be guilty of the offence of personation defined. who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, havino- voted once at any such election, applies at the same election for a ballot paper in his own name.

Enactments Defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 47 Vict, c. 51, ss. 1 and 2.

Sect. 1. Any person who corruptly by himself or by any other person, either What is treating, before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

Sect. 2. Every person who shall directly or indirectly, by himself or by any What is undue other person on his behalf, make use of or threaten to make use of any force, influence-violence, or restraint, or inflict or threaten to inflict, by himself or by any

other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Enactment Defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882, 45 46 Vict. c. 50, s. 77.

Sect. 77. "Bribery," "treating," "undue influence," and "personation" Definitions, include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a 47 48 Vict, parliamentary election, would make the person doing the same liable to any c. 70., penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

Part II.

Section 23. ENACTMENTS RELATING TO DISQUALIFICATION OF ELECTORS.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 47 Vict, c. 51, sections 37 38.

Prohibition of Sect. 37. Every person who, in consequence of conviction or of the report of disqualified person at any election court or election commissioners under this Act, or under the 35 n 36 0 Vkt 0tills ' Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the c. 60. ' Municipal Corporations Act, 1882, or under any other Act for the time being 45 46 Vict. in force relating to corrupt practices at an election for any public office, has c- 50 become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. Hearing of Sect. 38.â (1.) Before a person, not being a party to an election petition nor person before he a candidate on behalf of whom the seat is claimed by an election petition, is reported guilty by an election court, to have been guilty, at an election, of any U galpractice corrupt or illegal practice, the court, shall cause notice to be given to and incapacity' of such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence guilty. to s jj 0W why he should not be so reported.

(5.) Every person who, after the commencement of this Act, is reported by any election court, to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty.

(6.) Where a person who is a justice of the peace is reported by any election court, to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of public



prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court. to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a licence or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:â (a.) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses: (5.) If it appears to an election court. that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court. 47 48 Vict, (subject to the provisions of this Act as to a person having an C. 70.

opportunity of being heard by himself and producing evidence before being reported) shall report the same; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licenses: (c.) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in. this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

Note. Hearing of Accused. â Under sub-section (1) a person cannot be heard by counsel or by a solicitor, but- is only entitled to be heard personally. 1

The High Court has no jurisdiction to set aside or amend a report finding a person guilty of a corrupt practice, on the ground that the notice prescribed by this section has not been given. 2

#### FOURTH SCHEDULE.

Note. Declaration as to Election Expenses. â This schedule contains a form for the declaration of election expenses required by sect. 21. No such declaration is required in respect of an election under the Local Government Act, 1894. 3 (1) Beg. v. Hansel Jones (1889), 24 Q. B. D. 110; 59 L. J. Q. B. 82; 23 Q. B. D. 29; 60 L. T. 860; 61 L. T. 837; 38 W. R. 350.

37 W. R. 508; S. C. nom. Reg. v. (3) 56 57 Vict. c. 73, s. 48 (3);

Jones, 53 J. P. 739. and see s. 37 of the present Act.

(2) Preece v. Harding (1889), 50 51 Vict. c. 20.

Appendix I.

Short title.

Extent of Act.

Commencement of Act.

Definitions.

18 19 Vict. c. 120.

Compensation.

## THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

50 51 Vict. c. 26.

An Act to provide Compensation to the Occupiers of Allotments and Cottage Gardens for crops left in the ground at the end of their tenancies.

8th August, 1887.

Note. Application of Act. â The present Act which contains provisions of great importance as to the right of the outgoing tenant of an "allotment," within the definition contained in s. 4, to compensation for crops, c, extends, by virtue of the definitions of the terms " landlord " and " person " contained in that section, to " allotments " held by a local authority. It has therefore been thought proper to include the Act in the present work, though it is not directly referred to in the Local Government Act, 1894.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1. This Act may be cited as the Allotments and Cottage Gardens Compensation for Crops Act, 1887.

Sect. 2. This Act shall not extend to Scotland or Ireland or to the metropolis.

Sect. 3. This Act shall come into force on the first day of January one thousand eight hundred and eighty-eight, which day is in this Act referred to as the commencement of this Act. Sect. 4. In this Actâ

"The metropolis " means the city of London and all parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855. " Allotment " means any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden or as a farm, or partly as a garden and partly as a farm. " Cottage garden " means an allotment attached to a cottage. " Holding " means an allotment or cottage garden. " Tenant " means the holder of a holding under a landlord for any term, and includes the legal personal representative of a deceased tenant. " Landlord " means the person for the time being entitled to receive the rents and profits of any holding. " Person " includes a body of persons and a corporation aggregate or sole. " Contract of tenancy " means the letting of land for any term. "Determination of tenancy" means the cesser of a contract of tenancy by effluxion of time or from any other cause.

The designations of landlord and tenant shall for the purposes of this

Act continue to apply to the parties to a contract of tenancy until the conclusion of any proceedings taken under this Act on the determination of a tenancy.

Sect. 5. Upon the determination of the tenancy of a holding after the commencement of this Act the tenant shall be entitled notwithstanding

Allotments, &c., Compensation for Crops Act, 1887. 359 any agreement to the contrary to obtain from the landlord compensation 50 51 Vict, in money for the following matters and things, that is to say:—a c. 26.

(a.) For crops, including fruit, growing upon the holding in the ordinary course of cultivation, and for fruit trees and fruit bushes growing thereon, which have been planted by the tenant with the previous consent in writing of the landlord. b.) For labour expended upon and for manure applied to the holding since the taking of the last crop therefrom in anticipation of a future crop. (c.) For drains and for any outbuildings, pigsties, fowlhouses, or other structural improvements made by the tenant upon his holding with the written consent of his landlord. f Sect. 6. In the ascertainment of the amount of compensation payable to f n ' tioâ n the tenant under this Act any sum due to the landlord in respect of rent account 0 f rent or or of any breach of the contract of tenancy or wilful or negligent damage breach of con-committed or permitted by the tenant shall be taken into account in re- tract, duction of the amount of compensation.

Sect. 7. The landlord and tenant may agree upon the amount and time 0o? 1 J Slmpcâ of payment of compensation to be paid under this Act. If in any case " 0 ' b e e t e t i e d by they do not so agree, the difference shall be settled by an arbitrator. an arbitrator.

Sect. 8. If the landlord and tenant concur they may within twenty-Appointment of oight days after the determination of the tenancy jointly appoint such arbitrator, arbitrator. If they do not concur, such arbitrator shall be appointed in the following manner:—(1.) The landlord and tenant or either of them may apply personally or in writing to the justices of the peace, acting for the petty sessional division in which the holding is situated, in petty sessions, and such justices shall upon the receipt of the application appoint one of their number not being interested in the holding, or other competent person not being interested as aforesaid, to act as such arbitrator. (2.) If before award the person so appointed dies or becomes incapable of acting or for seven days after his appointment fails to act, the justices shall appoint in manner aforesaid another arbitrator. Sect. 9. The justices shall in all cases in which it is practicable obtain lop t the consent of the arbitrator to act without remuneration, and in any case person t0 act as in which it is impracticable to obtain such consent they shall direct that arbitrator with-the arbitrator shall be paid such moderate sum as they consider will out remunera-reasonably remunerate him for his time and expenses. Um '

Sect. 10. The arbitrator shall proceed to determine any difference Time for com-referred to him under this Act within seven days after his appointment. J tesan.

Sect. 11. The arbitrator, if he shall consider it desirable or necessary so Power f or a rbi-to do, shall have power to call for the production of any document which trator to adminis-is in the possession of either party, or which either party can produce, and ter oaths-which to the arbitrator seems necessary for determination of the difference referred to him, and to take the examination of the parties and witnesses on oath and



to administer oaths and take affirmations, and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

Sect. 12. The arbitrator may proceed in the absence of either party after rorer to proceed,. â. 1,1, â in absence of notice given to both parties. either party

Sect. 13. The award shall be in writing signed by the arbitrator, and Fonuof award shall be ready for delivery within fourteen days after his appointment, or ant i time for its within such extended time not exceeding in the whole twenty-eight days delivery, after his appointment as the parties may agree upon in writing.

Sect. 14. The costs (if any) of and attending the arbitration including Costs of arbitra-the remuneration (if any) of the arbitrator shall be borne and paid by the lon-parties in such proportion as to the arbitrator appears just, and the award may direct the payment of the whole or any part of the aforesaid costs by the one party to the other, or may declare that no costs shall be payable.

Sect. 15. The award shall fix a day not sooner than fourteen days after Day for payment. the delivery of the award for the payment of the money awarded for compensation, costs, or otherwise.

#### Appendix I.

50 51 Vict. c. 26.

Award to be final.

Recovery of compensation money.

No claim to be made under the Agricultural Holdings (England) Act for any matter or thing for which a claim is made under this Act.

Sect. 16. The award shall be final and conclusive in every case; and neither the submission to arbitration nor the award shall be made a rule of any court, or be removable by any process into any court.

Sect. 17. Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it shall be recoverable upon order made by the judge of the county court within the district of which the holding is situated, as money ordered to be paid by a county court under its ordinary jurisdiction is recoverable.

Sect. 18. No claim for compensation shall be made under the Agricultural Holdings (England) Act, 1883, for any matter or thing in respect of which a claim for compensation is made under this Act, and in any case in which the provisions of that Act and of this Act conflict the provisions of this Act shall prevail.

50 51 Vict, c. 48.

#### THE ALLOTMENTS ACT, 1887.

50 51 Vict. c. 48.

An Act to facilitate the provision of Allotments for the Labouring Classes.

16th September 1887.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Note.â Amendments of Act. â The present Act is most materially amended by the Allotments Act, 1890, 1 and by sects. 6 (3, 4) and 9 of the Local Government Act, 1894; and by sects. 9 10 of the last mentioned Act certain of its provisions are applied,

with modifications, to the acquisition of land by a parish council for any purpose for which they are authorised to acquire it, and to the hiring of land by a parish council for allotments.

Sect. 1. This Act may be cited as the Allotments Act, 1887. Short title.

Sect. 2.â (1.) On a representation in writing to the sanitary authority Duty of sanitary of any urban or rural district by any six registered parliamentary electors authority to or ratepayers resident, in the case of an urban district, in that district, or ents 1 and, in the case of a rural district, in some parish in that district, that the circumstances of the urban district or parish are such that it is the duty of the sanitary authority to take proceedings under this Act therein, the sanitary authority shall take such representation into consideration.

If the sanitary authority of any urban or rural district are of opinion, either after inquiry made in consequence of such representation or otherwise, that there is a demand for allotments for the labouring population in such urban district, or in any parish in such rural district, and that such allotments cannot be obtained at a reasonable rent and on reasonable conditions by voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same, the sanitary authority, subject to the provisions of this Act, shall by purchase or hire acquire any suitable land which may be available, whether within or without their district or the said parish, adequate to provide a sufficient number of allotments, and shall let such land in allotments to persons belonging to the labouring population resident in the said district or parish and desiring to take the same.

(2.) A sanitary authority shall not under this Act acquire land for allotments save at such price or rent that in the opinion of the sanitary authority all expenses, except such expenses as are incurred in making roads to be used by the public, incurred by the sanitary authority in acquiring the land and otherwise in relation to the allotments may reasonably be expected to be recouped out of the rents obtained in respect thereof.

For the purpose of this section, the expression " reasonable rent " means the rent, exclusive of rates, taxes, and tithe rentcharge which a person taking an allotment might reasonably be expected to pay, taking one year with another, to a landlord, having regard to the value of similar land in the neighbourhood, to the extent and situation of the allotment, to the expenses of adapting the land to the purposes of the allotment, and to the (1) 53 54 Vict. c. 65, post.

50 51 Vict, repairs and other outgoings payable by the landlord, and to the cost and c 48. risk of collecting the rents of, and otherwise managing allotments.

Note. Meaning of "parish." â The expression "parish" as regards parishes in rural districts is defined by sect. 14 (2) practically as meaning "contributory place." The difference in the meaning of the word "parish" as used in the present Act and in the Local Government Act, 1894, respectively, renders the provisions of the latter Act as to allotments in some respects very difficult to construe. As to the formation and boundaries of contributory places, see the note to sect. 15 of the Local Government Act, 1894, ante.

Representation by parish council. â By sect. 6 (3) of the last mentioned Act a parish council are given the same power of making a representation with respect to allotments as is conferred on parliamentary electors by the present Act. How that

enactment is to apply in the case of a parish that is not a contributory place seems doubtful.

**Petition to the county council.** Under the Allotments Act, 1890, a petition may be presented by six parliamentary electors or ratepayers to the county council where a representation has been made to a sanitary authority under the present section and the authority have failed to act on it, and that council may thereupon after inquiry acquire the powers of the sanitary authority and themselves provide land for allotments; and by sect. 9 (17) of the Local Government Act, 1894, a parish council are given the like power of petitioning the county council as is given to the six parliamentary electors by the Act of 1890.

**Price or rent of land.** Sub-sect. (2) of the present section, which places a limit on the price or rent to be given for land acquired for allotments, is by sub-sect. (13) of sect. 9 of the Local Government Act, 1894, to apply, with adaptations prescribed by the Local Government Board, where land is acquired for allotments under that section. It will also therefore apparently, under sect. 10 (1) of that Act, apply where land is hired for allotments by a parish council.

**Acquisition of Sect. 3.** (1.) For the purposes of the purchase of land by agreement by a land for purpose sanitary authority for allotments, section one hundred and seventy-eight 38 39 Vict. of the Public Health Act, 1875, and the Lands Clauses Consolidation Act, c. 55. 1845, and the Acts amending the same, shall be incorporated with this 8 9 Vict. c. 18. Act, except the provisions with respect to the purchase and taking of land otherwise than by agreement, and with respect to the provision to be made for affording access to the special Act.

(2.) If a sanitary authority are unable by hiring or purchase by agreement to acquire suitable land sufficient for allotments under this Act for any district or parish at a reasonable price or rent and subject to reasonable conditions, such authority may petition the county authority of the county in which the district or parish is situate, and the county authority (after such inquiry and procedure as provided in the sections herein-after incorporated in this Act) may make a provisional order authorising the sanitary authority to put in force, as respects the land mentioned in the order, the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of land otherwise than by agreement.

(3.) The Local Government Board, on the application of any county authority, shall introduce into Parliament a Bill confirming provisional orders made under this Act by such county authority, and the sanitary authority petitioning for the order shall be considered as the promoters of such order.

(4.) For the purpose of the purchase of land under this section otherwise than by agreement, sections one hundred and seventy-six, two hundred and ninety-six, and two hundred and ninety-seven of the Public Health Act, 1875, shall, so far as consistent with the tenour of this Act, be incorporated with this Act, and apply as if they were herein re-enacted, (1) 53 54 Vict. c. 65, post.

with the substitution of " the county authority " for " the Local Govern- 50 51 Vict. ment Board," and of " any officer of the county authority appointed for c. 48. the purpose of an inquiry" for "inspectors of the Local Government Board." Provided thatâ (a.) Any question of disputed compensation shall be referred to the arbitration



of a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator, then, on the application of either of them, by the Local Government Board, and the remuneration to be paid to the arbitrator appointed by the Local Government Board shall be fixed by that Board: (b.) If an arbitrator appointed for the purposes of this Act dies or becomes incapable to act before he has made his award, or fails to make his award within two months after he is appointed, his appointment shall determine, and the determination of the compensation shall be referred to another arbitrator appointed in like manner as if no arbitrator had been previously appointed: Provided always, that the same arbitrator may be re-appointed: (c.) An arbitrator appointed under this section shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1815, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and, further, the arbitrator, notwithstanding anything in the said Acts, shall determine the amount of the costs and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily. (5.) In construing for the purposes of this section any section or Acts incorporated with this section, this Act, together with any Act confirming a provisional order under this section, shall be deemed to be the special Act, and the sanitary authority shall be deemed to be the local authority or the promoters of the undertaking, as the case requires, and the word " land " shall have the same meaning as in this Act.

(6.) Where land is purchased by a sanitary authority under this Act otherwise than by agreement, the following provisions shall apply: (a.) The county authority shall not make a provisional order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company which is or may be required for the purposes of their undertaking: (h.) The county authority shall, in making a provisional order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner and to the convenience of other property belonging to the same owner, and shall so far as is practicable avoid taking an undue or inconvenient quantity of land from any one owner. (7.) For the purpose of the hiring of land by a sanitary authority for allotments, any person or body of persons or body corporate authorised to sell land to the sanitary authority for the purposes of this Act may, without prejudice to any other power of leasing, lease land to the sanitary authority, without any fine or premium, for a term not exceeding thirty-five years.

(8.) The county authority shall not make a Provisional Order for purchasing any right to coal or metalliferous ore.

Note. Lands of the Duchy of Lancaster.â Sect. 178 of the Public Health Act, 1875, 1 empowers the Chancellor and Council of the Duchy of Lancaster to sell lands belonging to the Crown in right of the Duchy to local authorities.

(1) 38 39 Vict. c. 55, s. 178.

#### Appendix I.

50 51 Vict. Compulsory purchase of land for allotments. â The provisions of the present

C 48. section as to the compulsory purchase of lands for the purpose of allotments are entirely remodelled by sect. 9 of the Local Government Act, 1894, by which the necessity of applying to Parliament where it is desired to obtain powers to purchase land compulsorily for that purpose is done away with.

The provisoes to sub-sect. (4) and, subject to adaptations to be prescribed by the Local Government Board, sub-sects. (5), (6), (7), and (8) of the present section are expressly incorporated with that section, and will therefore remain in force. On the other hand, the latter part of sub-sect. (2), which authorizes the county council, who now act as county authority under the present Act, 1 to make a provisional order for the compulsory acquisition of land, sub-sect. (3) and the first part of sub-sect. (4) incorporating certain portions of the Public Health Act, 1875, appear to be impliedly repealed by the section in question.

Acquisition of land for purposes of parish council. â By sect. 9 of the Local Government Act, 1894, the provisoes to sub-sect. (4) and sub-sects. (5), (6), (7), and (8) are applied, as in that section mentioned, not only to the acquisition of land for allotments, but also to the acquisition of land by a parish council for any purpose for which they are authorised to acquire it.

Compulsory hiring of allotments. â The provisions of the present section as to the appointment and functions of an arbitrator are applied by sub-sects. (2), (7), and (10) of sect. 10 of the Local Government Act, 1894, to arbitrations on questions connected with the hiring of land for allotments by a parish council.

Meaning of a land." â This expression is defined in sect. 17.

Sect 4. Costs to be awarded in certain cases."

Note. Costs in Parliament. â The present section relates to the costs of promoting or opposing a Bill in Parliament for confirming a Provisional Order made under sect. 3, and will cease, in consequence of the provisions of the Local Government Act, 1894, to have any effect.

Sect. 5. The sanitary authority may improve any land acquired by them under this Act, and adapt the same for letting in allotments, by draining, fencidg, and dividing the same, acquiring approaches, making roads, and otherwise, as they think lit, and may from time to time do such things as may be necessary for maintaining such drains, fences, approaches, and roads, or otherwise for maintaining the allotments in a proper condition.

Note. Application of section to parish council. â By sub-sect. (14) of sect. 9 of the Local Government Act, 1894, this and the next three sections are to apply where land for allotments is purchased by the county council and assured to a parish council under that section, as if the parish council were the sanitary authority.

By sect. 10 (6) of the Local Government Act, 1894, this and the next three sections are also, subject, however, to some important modifications, to apply where land is hired by a parish council for allotments, as if that council were the sanitary authority and also the allotment managers.

Management of Sect. 6.â (1.) Subject to the provisions of this Act, the sanitary allotments. authority may from time to time make, revoke, and vary such regulations as appear to be necessary or proper for regulating the letting of allotments under this Act, and for preventing any undue preference in the letting thereof, and generally for

carrying the provisions of this Act into effect; and such regulations may define the persons eligible to be tenants of such allotments, and the notices to be given for the letting thereof, and the size of the allotments, and the conditions under which they are to be cultivated, and the rent to be paid for them. Provided that all such regulations shall make provision for reasonable notice to be given to a tenant of

Improvement and adaptation of land for allotments.

(1) See sect. 16, and the note to that section, post.

any allotment of the determination of his tenancy. Provided also, that 50 51 Vict. all regulations made under this section shall not be of any force unless c. 48.

and until they have been confirmed by the Local Government Board, in like manner and subject to the like provisions as in the case of bye-laws 38 39 Vict, under the Public Health Act, 1875. c- Â (2.) All regulations for the time being in force under this section shall be binding on all persons whatsoever; and the sanitary authority shall cause them to be from time to time made known, in such manner as the sanitary authority think fit, to all persons interested, and shall cause a copy thereof to be given gratis to any inhabitant of the district or parish demanding the same.

(3.) Subject to the provisions of this Act the sanitary authority may from time to time appoint, and when appointed, remove allotment managers of land acquired under this Act for allotments, and such allotment managers shall consist either partly of members of such authority and partly of other persons, or wholly of other persons, so that in either case such other persons be persons residing in the locality and contributing to the rate out of which the expenses under this Act are paid.

(4.) The proceedings and powers of allotment managers shall be such as, subject to the provisions of this Act, may be prescribed from time to time by the sanitary authority; the allotment managers may be empowered by the sanitary authority to do anything in relation to the management of such allotments which the sanitary authority are authorised to do, and to incur expenses to such amount as the sanitary authority prescribe, and any expenses properly so incurred shall be deemed to be expenses of the sanitary authority under this Act.

Note. Land for allotments held by parish council. â As to the application of the present section where land for allotments is held by a parish council, see the note to sect. 5.

Confirmation of regulations. â The provisions of the Public Health Act, 1875, 1 as to the confirmation of bye-laws, are set out in the note to sect. 8 of the Local Government Act, 1894, ante.

Allotment managers. â Under sect. 6 (4) of the Local Government Act, 1894, after a parish council for the parish interested in allotments comes into office, the powers and duties of the allotment managers are to be exercised and performed by the parish council, and it will not be necessary to appoint such managers. How that enactment is to apply in the case of allotments provided for a contributory place other than a parish seems doubtful. Sect. 9, post, provides for the election of allotment managers in certain cases.

Sect. 7.â (1.) The rents of the allotments shall be fixed at an amount Provisions as to not less than such as may reasonably be expected to ensure the sanitary letting and use of authority from loss; but in calculating such loss any expenses incurred in allotment9-



an unsuccessful attempt to acquire land for allotments shall be excluded and, subject as aforesaid, such rents may be from time to time charged as are reasonable, having regard to the agricultural value of the land, and not more than a quarter's rent shall be required to be paid in advance in any case where it is deemed necessary by the sanitary authority to require the payment of rent in advance.

(2.) The sanitary authority shall, for the purposes of all rates, taxes, and tithe rentcharge, be deemed to be the occupiers of the allotments which are let, but they shall cause the sums from time to time paid by way of rates, taxes, and tithe rentcharge in respect of the allotments to be apportioned among them, and cause the sum so apportioned in respect of each allotment to be certified to the tenant thereof, and such sum shall be added to the rent otherwise payable by the said tenant in respect of such allotment, and shall be deemed to be part of such rent, and be recoverable accordingly: Provided always, that for the purposes of the parliamentary franchise, and the municipal and all other local franchises, the tenants (1) 38 39 Vict. c. 55, ss. 133-186, 50 51 Vict, shall be deemed to be the occupiers, and such rates to have been paid by c. 48. them, notwithstanding the provisions herein-before contained.

(3.) One person shall not hold any allotment or allotments acquired under this Act exceeding one acre, and an allotment shall not be sub-let.

(4.) Provided that if at any time any allotment cannot be let in accordance with the provisions of this Act and the regulations, the same may be let to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the sanitary authority to resume possession thereof within a period not exceeding twelve months if it should at any time be required to be let under the provisions aforesaid.

(5.) No building other than a tool-house, shed, greenhouse, fowlhouse, or pigstye shall be erected on any part of any allotment, and if any building other than as aforesaid is so erected the sanitary authority shall forthwith pull down such building and sell and dispose of the materials thereof, and the proceeds of the sale shall be applicable in like manner as the rent of the allotment. If any building so allowed to be erected is erected upon an allotment, then at the end of the tenancy neither the sanitary authority nor the incoming tenant shall be bound to take any such building; or pay any compensation therefor, but the outgoing tenant shall be at liberty, before the expiration of his tenancy, to remove the same,, and, if he fails so to do, the sanitary authority may pull down the building and dispose of the materials, and apply the proceeds in like manner as if it were a building prohibited to be erected.

(6.) A tenant of an allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him, for which he has no claim for compensation.

Note. Land for allotments held by parish council. â As to the application of the present section where land for allotments is held by a parish council, see the note to sect. 5.

Recovery of rent; Sect. 8.â (1.) The rent for an allotment let in pursuance of this Act, and possession of and the possession of such allotment in the case of any notice to quit, or allotments. failure to deliver up possession of the same as required by law,

may be recovered by the sanitary authority as landlords, in the like manner as in any other case of landlord and tenant.

(2.) If the rent for any allotment is in arrear for not less than forty days, or if it appears to the sanitary authority that the tenant of an allotment not less than three months after the commencement of the tenancy thereof has not duly observed the regulations affecting such allotment made by or in pursuance of this Act, or is resident more than one mile out of the district or parish for which the allotments are provided, the sanitary authority may serve upon the tenant, or if he is residing out of the district or parish, leave at his last known place of abode in the district or parish, or fix in some conspicuous manner on the allotment, a written notice determining the tenancy at the expiration of one month after the notice has been so served or affixed, and thereupon such tenancy shall be determined accordingly: Provided that in every such case the sanitary authority in default of agreement between the incoming and outgoing tenant shall on demand pay to the tenant whose tenancy is so determined any compensation due to him as an outgoing tenant; and such compensation shall be assessed by an arbitrator appointed by the sanitary authority, or, if the tenant so elect, either by an arbitrator appointed under the Allotments 50 51 Vict. and Cottage Gardens Compensation for Crops Act, 1887, or by a reference c. 26. under the Agricultural Holdings (England) Act, 1883.

46 il Vict. (3 Upon the recovery of an allotment from any tenant, the court or c ' 61 " justice directing the recovery may stay delivery of possession until pay- ment of the compensation, if any, due to the outgoing tenant has been made or secured to the satisfaction of the court or justice.

Note. Zand for allotments held by parish council â As to the application of the present section where land for allotments is held by a parish council, 50 51 Vict, see the note to sect. 5. c. 48.

Compensation to outgoing tenant of allotment. â The Allotments and Cottage Gardens Compensation for Crops Acts, 1887, 1 which applies not only in the case mentioned in sub-sect. (2), but also generally as regards the compensation payable to any outgoing tenant of an " allotment" within the meaning of that Act, is set out, ante. The provisions of the Agricultural Holding (Kngland) Act, 1883, 2 as to the determination of the compensation due to an outgoing tenant are too long for inclusion in the present work.

Sect. 9.â (1.) Where allotments have been provided under this Act for Election of allot-a parish in any rural district, a petition to the sanitary authority may be nient managers, presented by a number of the electors of allotment managers in such parish, not being less than one sixth of the whole number of such electors, prayiug for the election of allotment managers in such parish, and thereupon the sanitary authority shall order such election, and the allotment managers so elected shall be the allotment managers of the allotments in such parish in lieu of allotment managers appointed by the sanitary authority, who, on an election under this Act, shall cease to hold office.

(2.) The first election shall be held on such day as may, subject to the regulations hereafter mentioned, be fixed by the said authority.

(3.) The number of allotment managers in each case shall be such (not being less than three nor more than five) as the sanitary authority may fix, and the quorum shall be three, or, if the number of managers is less than five, be two.

(4.) The allotment managers shall retire triennially on such day as may be prescribed by the regulations herein-after mentioned, and the allotment managers first elected shall retire on the day for retirement which occurs next after the expiration of three years after the day fixed for their election.

(5.) Any casual vacancy among the allotment managers which occurs by death, resignation, disqualification, or otherwise may, if there remains a quorum of allotment managers, be filled up by such managers, but the person elected to fill the vacancy shall hold office only for the same time as the vacating manager would have done.

(6.) If at any time by reason of a failure of election, either by electors or allotment managers, or of any other cause, there is no allotment manager, or no quorum of allotment managers in any parish, the sanitary authority shall appoint allotment managers under this Act in that parish, and shall continue to appoint the same until another petition for the election of allotment managers is presented under this section.

(7.) The electors of allotment managers shall be the parliamentary electors in the parish, that is to say, the persons registered in any list of parliamentary electors for the parish as entitled to vote at an election of a member to serve in Parliament, and an elector shall not give more than one vote for any candidate nor vote for more candidates than the number to be elected.

(8.) The election of allotment managers shall be held at such time, and in such manner, and in accordance with such regulations as the Local Government Board may from time to time by order prescribe; and the Local Government Board may make regulations respecting the duties of the returning officer, and the expenses of the election, and may do and make regulations respecting all such things as appear to them necessary or proper for carrying into effect this section, whether preliminary or incidental to such election, and for applying to such election any enactments respecting offences at the election of guardians, and may revoke or alter any previous order under this section: Provided as follows:—(a.) Such guardian or overseer of the parish, or other person as the sanitary authority may appoint, shall be the returning officer; (b.) A poll, if demanded, shall be taken by ballot, and the said regulations—(1) 50 51 Vict. c. 23. (2) 46 47, Vict. c. 61.

50 51 Vict. c. 23. shall provide for the application to such poll of the Ballot c. 48. Act, 1872, including the provisions for punishing offences; 35 36 Vict. (c) The poll shall be held on one day only, and shall close at eight o'clock in the evening, and shall be open for at least the period from five to eight o'clock in the evening; (d.) The returning officer shall not vote except in the case of an equality of votes between any candidates, in which case he shall have a casting vote; (e.) Any ballot boxes, instruments, fittings, and compartments provided by any public authority for parliamentary, municipal, or school board elections, or belonging to any public authority for the purpose of elections, shall be lent to the returning officer on his request for the purpose of an election of allotment managers, under such conditions and either free of charge or for such reasonable charge as may be prescribed by regulations under this section; (f.) The returning officer may, except during ordinary



school hours, use free of charge for the purpose of an election under this section any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any rate in the parish, but he shall make good any damage done to the room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the room, on account of its being so used. (9.) An election under this section shall not be questioned except in such manner as may be prescribed by regulations under this section, and the regulations may apply to such election any enactments respecting the questioning of an election of guardians.

(10.) If an allotment manager is punished with imprisonment for any crime, or is adjudged a bankrupt, or enters into a composition or arrangement with his creditors, or ceases to reside in, or in the neighbourhood of, the parish, or absents himself for twelve months from all meetings of the allotment managers, except for temporary illness or other cause, to be approved by such managers, or is a tenant of any allotment under the management of the managers, he shall cease to be an allotment manager, and his office shall be vacant, and a person who, if elected, would by virtue of this enactment cease, otherwise than by reason of absence from meetings, to be a manager, shall not be qualified to be elected a manager, but, save as aforesaid, any retiring manager shall be eligible for reelection.

Note. Allotment managers. â Sect. 6 (3, 4) of the Local Government Act, 1894, provides that a parish council shall have the same power of applying for the election of allotment managers as is conferred on parliamentary electors by the present Act; and also that, after a parish council for the parish interested in allotments comes into office, the powers and duties of the allotment managers shall be exercised by the parish council, and that it shall not be necessary to elect such managers.

The effect of these provisions, in the case of allotments provided by a district council for a contributory place being a parish with a parish council, appears to be simply to require the district council, upon the application either of the parish council or of the number of electors specified in the present section, to invest the parish council with the powers and duties of allotment managers. How, if at all, these provisions are to apply in the case of a parish that is not a contributory place seems doubtful.

Expenses and Sect. 10.â (1.) All expenses incurred by a sanitary authority under this receipts. Act, including allowances to officers of such authority for duties under this Act, shall be defrayedâ (a.) in the case of an urban sanitary authority as part of the general 38 k 39 Vict. expenses of their execution of the Public Health Act, 1875; and c- 65. (.) in the case of a rural sanitary authority as special expenses incurred in the execution of the Public Health Act, 1875, and such ex- penses shall be charged to the parish on account of which the 50 51 Vict. land was acquired. c Â 48.

(2.) Section two hundred and ninety-eight of the Public Health Act, 1875, with respect to costs of Provisional Orders, shall apply to costs incurred by a sanitary authority in relation to Provisional Orders under this Act.

(3.) All sums received by a sanitary authority in respect of any land acquired under this Act, otherwise than from any sale or exchange, shall be applied in aid of the expenses incurred by them in respect of such land, and so far as they are not required for the payment of those expenses, shall be applied in aid of the general and special

expenses above in this section mentioned, and in the case of a rural sanitary authority shall be credited to the parish on account of which the land was acquired.

(â 4.) The sanitary authority may borrow for the purposes of acquiring, improving, and adapting land under this Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general and special expenses; and all sums payable by the sanitary authority in respect of principal or of interest on any money so borrowed shall be defrayed in manner provided by this section respecting expenses incurred under this Act in respect of such land.

(5.) Sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine both inclusive, of the Public Health Act, 1875, relating to borrowing by a 38 33 Vict. local authority, and sections two hundred and forty-two and two hundred c- 50 and forty-three of the same Act, relating to loans by the Public Works Loan Commissioners to a local authority, shall apply to a loan for the purposes of this Act to a sanitary authority in like manner as if they were herein re-enacted and in terms made applicable thereto.

(6.) Separate accounts shall be kept of the receipts and expenditure under this Act of the sanitary authority and their officers and of allotment managers and other persons acting under this Act, and such accounts shall be audited in like manner, and with the like incidents and consequences as the accounts of the other receipts and expenditure of the sanitary authority and their officers under the Public Health Act, 1875, and in the case of allotment managers and other persons as the accounts of officers of the sanitary authority.

Sect. 11.â (1.) Where the sanitary authority are of opinion that any Sale of superland acquired by them in pursuance of this Act or any part thereof is no fan" longer needed for the purpose of allotments, or that any other land more suitable for such purpose is available, they may, with the sanction of the county authority, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(2.) The proceeds of a sale under this section and any money received by the sanitary authority on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the sanitary authority in respect of the land acquired under this Act, or in acquiring, adapting, and improving other land for allotments under this Act, and any surplus remaining may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable: Provided that any such proceeds, surplus, interest, and money shall, in the case of a rural sanitary district, be credited to or applied for the benefit of the parish for which the land was purchased.

(3.) Sections one hundred and twenty-eight to one hundred and thirty-two (both inclusive) of the Lands Clauses Consolidation Act, 1815 (relating to the right of pre-emption of superfluous lands) shall apply upon any sale by a sanitary authority in pursuance of this section of any land, whether because it is' no longer needed for the purpose of allotments, or 50.51 Vict because other land more suitable for the

purpose is available, but save as c 48. aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not be deemed to be incorporated in this Act, or in any Provisional Order made under this Act.

Note. Sale of superfluous land.â Sect. 9 (13) of the Local Government Act, 1894, incorporates the present section, subject to adaptations to be prescribed by the Local Government Board. It will accordingly apply not only to land acquired for allotments, but also to land acquired under that section for the purposes of a parish council.

Power to make Sect. 12. "Where it appears to any sanitary authority that, as regards their scheme for pro- district, if urban, or any parish in their district, if rural, land can be ac-vision of common qu j rei j f or affording common pasture at such price or rent that all expenses pasture. incurred by the sanitary authority in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the labouring population, such sanitary authority may submit to the county authority for the county in which the district or parish is wholly or partly situate a scheme for providing such common pasture, and the county authority, if satisfied of the expediency of such scheme, may by order authorise the sanitary authority to carry it into effect, and upon such order being made this Act shall, with the necessary modifications, apply in like manner as if " allotments " in this Act included common pasture, and " rent" included a charge for turning out an animal.

Provided that the regulations made under this Act may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

Note. Common pasture.â Sect. 9 (16) of the Local Government Act, 1894, provides that the expression " allotments" in that section shall include common pasture where authorised to be acquired under the present Act.

Power for allot- Sect. 13.â (1.) The allotment wardens under the Inclosure Act, 1845, ment wardens or, an( j t h e Acts amending the same, having the management of any laud appro-teeÂ s l â Tran r S fe S r to piiated under the said Acts either before or after the passing of this Act for sanitary autho- allotments or field gardens for the labouring poor of any place, may by rity. agreement with any sanitary authority within whose district such place 8 9 Vict. c. 119. ia w 10 iy or partly situate, transfer the management of such land to the sanitary authority, upon such terms and conditions as may be agreed upon with the sanction, as regards the said allotment wardens, of the Land Commissioners for England, and thereupon such land shall vest in the sanitary authority. 45 k 46 Vict. (2.) All trustees within the meaning of the Allotments Extension Act, c 80. 1882, required or authorised by that or any other Act to let lands in allot- ments to cottagers, labourers, journeymen, or others in any place may, if they think fit, in lieu of letting such land in manner provided by the said Acts, sell or let such land to the sanitary authority of the district in which such place is wholly or



partly situate, upon such terms as may be agreed upon, with the sanction, as regards the said trustees, of the Charity Commissioners for England and Wales.

(3.) The provisions of this Act shall apply to land vested in the sanitary authority under this section, in like manner as if it had been acquired by the sanitary authority under the general powers of this Act.

Note. Allotments under the Inclosure Act, 1845, and the amending Acts. As to allotments under these Acts, see ante, pp. 52-57. The functions of the Land Commissioners are now vested in the Board of Agriculture. 1 (1) 52 53 Vict. c. 30.

Allotments Extension Act, 1882. As to this Act, see ante, p. 48-50. 50 51 Vict.

Sect. 14. (1.) If expenses under this Act are incurred in respect of two or more parishes, such expenses shall be apportioned among those parishes in the following manner and subject to the like provisions as special expenses incurred and contributed for the common benefit of two or more contributory places under the "Public Health Act, 1875, may be apportioned.

(2.) Where in a rural district any area other than a parish is a contributory place for the purposes of the Public Health Act, 1875, this Act shall apply to such contributory place as if it were a parish, and the expression "parish" in this Act shall not include any parish wholly or partly within such contributory place, and the parliamentary electors for the contributory place shall be the persons registered in any list of parliamentary electors for any parish wholly in such contributory place, or for any parish partly therein, if registered "in respect of any qualification situate in such contributory place.

(3.) Where a district or parish forms part of more than one county, it shall be deemed for the purposes of this Act to be situate wholly in that county which comprised, according to the last published census for the time being, the largest portion of the population of such district or parish, and where such population is not specified in such census, then in the county in which the largest part of the area of such district or parish is situate, and any doubt which may arise under this section as to the county shall be determined by the Local Government Board.

Two or more parishes immediately adjoining each other may make a representation under this Act, and a sanitary authority of a rural district may take proceedings in respect of such parishes as if they were a single parish.

Note. Meaning of "parish." It will be seen that the effect of sub-sect. (2) is simply that the expression "parish" in the present Act means "contributory place." As to the formation and boundaries of contributory places, see the note to sect. 15 of the Local Government Act, 1894, ante.

Sect. 15. The sanitary authority shall cause a register to be kept showing Register of the particulars of the tenancy, acreage, and rent of every allotment let, and tenancies, of the unlet allotments, and such register shall be open to the examination of ratepayers in the urban district or the parish for which the allotments have been provided, in such manner as may be prescribed by the regulations made under this Act by the sanitary authority, and any ratepayer of such district or parish, without paying any fee, may take copies of or extracts from such register, and within one month after the twenty-fifth day of March in every year shall cause an annual statement showing their receipts and expenditure under this Act in respect of the year ending on that day, and their liabilities outstanding on that day, to be deposited at some convenient place in the

district, if urban, or the parish to which the statement relates if the district is rural, and any ratepayer may without fee inspect and take copies of such statement.

Sect. 16. For the purposes of this Act " county authority " shall be any Definition of representative body elected by the inhabitants of the county which may be county authority, established under any Act of any future session of Parliament, and until such representative body is established the powers and duties of the county authority under this Act shall be exercised and performed by the Local Government Board, and the provisions of this Act and of the enactments incorporated with this Act shall accordingly be construed with the necessary modification.

Note. County authority. â This expression now, by virtue of the Local Government Act, 1888, " means countv council.

As regards county boroughs, however, that Act provides that the Local Government Board shall continue to act as county authority. 2 And by (1) 51 52 Vict. c. 41. (2) lb. s. 34 (7).

#### Appendix I.

50 51 Vict, c. 48.

#### Definitions.

Extent of Act, sect. 9 (18) of the Local Government Act, 1894, it is provided that that section shall apply to a county borough with the necessary modifications, and in particular with the modification that the orderâ i. e. the order for the compulsory acquisition of landâ shall be both made and confirmed by the Local Government Board, and shall be carried into effect by the council of the county borough.

Sect. 17. In this Act, unless the context otherwise requiresâ

The expression " allotment " includes a field garden.

The expressions " urban district" and " rural district" mean respectively an urban and rural sanitary district within the meaning of the Public Health Act, 1875.

The expression " sanitary authority" means the urban sanitary authority of an urban sanitary district and the rural sanitary authority of a rural sanitary district within the meaning of the Public Health Act, 1875.

The expression " land " includes pasture, arable, and other land, and any right of way or easement. Sect. 18. This Act shall not apply to Scotland or Ireland.

51 52 Vict, c. 41.

#### THE LOCAL GOVERNMENT ACT, 1888.

51 52 Vict. c. 41.

An Act to amend the laivs relating'Jo Local Government in England and Wales, and for other purposes connected therewith. 13th August, 1888.

#### PART III.

#### BOUNDABIES.

Note. Provisions of the Local Government Act, 1894.â The only sections of Part III. of the present Act referred to in the Act of 1894, 1 are sects. 54, 2 57, 3 58, 4 and 59. s It has, however, with the object of giving as complete a view of the whole question of local boundaries as possible, been thought desirable to include in the present work the whole part, with the exception of a few sections which are either spent, or which, though contained in the present part of the Act, do not relate to boundaries.

Sect. 50. (1.) The first council elected under this Act for any Boundary of administrative county shall, subject as herein-after mentioned, be elected C & J for first for the county at large as bounded at the passing of this Act for the purpose of the election of members to serve in Parliament for the county: Provided always, that (A.) This enactment shall not apply to the boundary between two administrative counties which are portions of one entire county, and in case of those administrative counties, the boundary between the portions, as existing for the purposes of county rate, shall, subject to any change made by or in pursuance of this Act, be the boundary of the administrative county for which the council is elected; and, (.) Where any urban sanitary district is situate partly within and partly without the boundary of such county, the district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the census of one thousand eight hundred and eighty-one.

(c.) Where any portion of an administrative county has before the passing of this Act been transferred to another administrative county for the purposes of the Acts relating to the police or Contagious Diseases (Animals) or otherwise, nothing in this Act shall affect such transfer.

(.) The wapentake of the ainsty of York (except so much as is included in the municipal borough of York as extended by the York Extension and Improvement Act, 1884) shall for all the purposes of this Act be deemed to be part of the west riding of the county of York.

(2.) The county council elected under this Act shall have for the purposes of this Act authority throughout the administrative county for (1) 56 57 Vict. c. 73. (11), 41 42, 54 (2), 80 (2).

(2) See lb., ss. 36 (5), 54 (2, c). (4) See lb., s. 36 (6).

(3) See lb., ss. 36 (1), (8), (10), (5) See lb., s. 69.

51 52 Vict.-which it is elected, and the administrative county as bounded for the purpose of the election shall, subject to alterations made in manner herein-after mentioned, be for all the purposes of this Act the county of such county council.

(3.) If any difference arises as to the county which contains the largest portion of the population of any such district as above in this section mentioned, such difference shall be referred to the Local Government Board, whose decision shall be final.

(4.) This section applies to an administrative county within the meaning of this Act, save that it shall not apply to the administrative county of London, nor to any county borough, and any place which, though forming part of any such borough for the purposes of the election of members to serve in Parliament, is not within the municipal boundary of such borough shall, notwithstanding anything in the foregoing provisions of this section, form, for the purposes of this section, part of the county in which such place is situate.

Note. Administrative counties. County boroughs. By sect. 100, the expression " administrative county " in the present Act, " means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough."

By virtue of sub-sect. (2) the present section, in conjunction with the provisions as to certain special counties mentioned below, permanently determines the boundaries



of administrative counties, subject to any alterations that may from time to time have been made.

Each of the fifty-two ancient counties in England and Wales constitutes, with the alterations of boundary provided for by the present section and any further alterations made since the passing of the Act, a single administrative county, with the following exceptions:â The Metropolis was by sect. 40 constituted the administrative county of London; and this provision of course affects the boundaries of the administrative counties of Middlesex, Surrey and Kent. By sect. 46, the three ridings of Yorkshire, the three divisions of Lincolnshire, the eastern and western divisions of Sussex, the eastern and western divisions of Suffolk, the Isle of Ely and the residue of the county of Cambridge, and the soke of Peterborough and the residue of the county of Northampton, were respectively made separate administrative counties. By sect. 49 the Scilly Islands are excluded from the administrative county Cornwall. 1 And since the passing of the Act the Isle of Wight and the residue of the county of Southampton have been made separate administrative counties. 2 The total number of administrative counties is now, therefore, sixty-two.

By sect. 31 certain important boroughs were constituted "county boroughs"; and by sects. 52 and 54 provisions are made for the constitution of further county boroughs. County boroughs do not share in the election of county councils, and the area of a county borough does not, therefore, form part of any administrative county. But a county borough is to some extent in the position of an administrative county itself; and by sect. 34 (1) the mayor, aldermen, and burgesses of a county borough acting by the council have, subject to the provisions of this Act, the powers, duties, and liabilities of a county council. In the Local Government Act, 1894, it may be observed, the expression "county" includes a county borough, and the expression county council includes the council of a county borough. 3

The following is a list of the county boroughs:â

Barrow, Bath, Birkenhead, Birmingham, Blackburn, Bolton, Bootle cum Linacre, Bradford, Brighton, Bristol, Burnley, Bury, Canterbury, Cardiff, Chester, Coventry, Croydon, Derby, Devonport, Dudley, Exeter, Gateshead, Gloucester, Great Yarmouth, Grimsby, Halifax, Hanley, Hastings, Huddersfield, Ipswich, Kingston-upon-Hull, Leeds, Leicester, Lincoln, Liverpool, Manchester, Middlesbrough, Newport (Mon.), Newcastle-upon-Tyne, Northampton, Norwich, Nottingham, Oldham, Oxford, Plymouth, Portsmouth, Preston, (1) See also 53 54 Vict. c. clxxvi. (3) 56 57 Vict. c. 73, s. 75 (2).

(2) 52 53 Vict. c. clxxvii.

Reading, Rochdale, Saint Helen's, Salford, Sheffield, Southampton, South 51 52 Vict Shields, Stockport, Sunderland, Swansea, Walsall, West Bromwich, West c. 41.

Ham, Wigan, Wolverhampton, Worcester, York.

These boroughs were all made county boroughs by the present Act, except Grimsby, Newport (Mon.) and Oxford, which have been constituted county boroughs by provisional orders of the Local Government Board duly confirmed since the passing of the Act. 1

Parliamentary boundaries. â-With regard to the boundaries of counties for the purposes of parliamentary elections, reference may be made to the Parliamentary

Boundaries Act', 1832, 2 the Boundaries Act, 1868, 3 and the Redistribution of Seats Act, 1885. 4

Entire county. â This expression is defined by sect. 100 as meaning "in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties."

Sect. 51. In the constitution of electoral divisions of a county, whether for the first election or for subsequent elections, the following directions Direct, on 8 r or shall be observedâ constitution of (1.) The divisions shall be arranged with a view to the population of electoral divi-each division being, so nearly as conveniently may be, equal, sions. regard being had to a proper representation both of the rural and of the urban population, and to the distribution and pursuits of such population, and to area, and to the last published census for the time being, and to evidence of any considerable change of population since such census; (2.) Electoral divisions shall, so far as may be reasonably practicable, be framed so that every division shall be a county district or ward, or a combination of county districts or wards, or be comprised in one county district or ward, but where an electoral division is a portion of a county district or ward, and such portion has not a defined area for which a separate list or part of a list of voters is made under the Acts relating to the registration of electors, such portion shall, until a new register of electors is made, continue to be part of the district or ward of which it has been treated as being part in the then current register of electors; (3.) Whenever under the provisions of this section a county district is divided into two or more portions, every such portion shall, as far as possible, consist of an entire parish or of a combination of entire parishes; (4.) In determining the electoral divisions for the first election, the foregoing provisions shall apply as if, where a rural sanitary district is situate in more than one county, each portion of the district which is situate in the same county were a county district, and any such portion may be combined with a county district, or portion of a county district, although not adjoining; (5.) The electoral divisions for the first election shall be fixed on or before the eighth day of November next after the passing of this Act.

Note. Electoral Divisions.â Except in the case of London, each electoral division, under sect. 2 (2) (e), returns one councillor.

The original division of administrative counties other than London was effected under sect. 2 (3) as follows:â The Local Government Board apportioned the number of councillors for the county between the boroughs which had sufficient population to return one councillor and the rest of the county. Any borough to which one councillor was assigned became an electoral division. A borough to which more than one councillor was assigned, was (1) See 52 53 Vict. c. xv.; 53 (2) 2 3 Wm. IV. c. 64.

54 Vict. c. cciv.; 54 55 Vict. (3) 31 32 Vict. c. 46, s. 11.

c ccx (4) 48 49 Vict. c. 23, s. 18.

Appexidix I.

51 52 Vict, c. 41.

Consideration of alterations of boundaries by county councils.

Future alterations of town-j daries.

divided into electoral divisions by the borough council. The rest of the county was divided into electoral divisions by the quarter sessions.

The electoral divisions of the county of London, and the number of councillors to be returned by each division, are provided for by sect. 40.

Alterations in electoral divisions may be effected under sect. 54.

Wards. â The expression "ward" is not defined in the present Act. For the purposes of the present section it no doubt means a ward of a borough or other urban sanitary district. Provisions for the determination and alteration of wards of a borough are contained in the Municipal Corporations Act, 1882, 1 the Municipal Corporations Act, 1893, 2 and sects. 54 and 55 of the present Act. Such wards are very frequently dealt with by Local Acts. Provisions as to the determination and alteration of wards of urban districts other than boroughs are contained in sect. 57 of the present Act. 3

Sect. 52. Provisional order as respects boroughs and urban sanitary districts in the same area.

Note. Borough not co-extensive with urban sanitary district. â As to the present section, which is now spent, except as regards the borough of Folkestone, see the note to sect. 36 of the Local Government Act, 1894, ante, p. 185.

Sect. 53.â (1.) Every report made by the Boundary Commissioners under the Local Government (Boundaries) Act, 1887, shall be laid before the council of any administrative county or county borough affected by that report.

(2.) It shall be the duty of the council to take into consideration such report, and to make such representations to the Local Government Board as they think expedient for adjusting the boundaries of their county, and of other areas of local government partly situate in their county, with a view of securing that no such area shall be situate in more than one county.

Note. Boundary Commission. â As to the report referred to in sub-sect. (1), which under sect. 36 (12) of the Local Government Act, 1894, is to be laid before county and county borough councils, see the note to that section, ante.

Sect. 54.â (1.) Whenever it is represented by the council of any county or borough to the Local Government Boardâ (a) that the alteration of the boundary of any county or borough is desirable; or (b) that the union, for all or any of the purposes of this Act, of a county borough with a county is desirable; or (c) that the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable; or (d) that it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough; or (e) that the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable; or (J) that the alteration of any area of local government partly situate in their county or borough is desirable, the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry, and may make an order for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such order, and if they make the order may by such order divide or alter any electoral division.

(1) 45 46 Vict. c. 50. ss. 30, 212.

(2) 56 Vict. c. 9.

(3) The provisions of the Public Health Act, 1875 (38 39 Vict. c. 55, s. 271, and schedule ii. rule 6), as to wards of local government districts were practically



superseded by sect. 57 of the present Act; and the second schedule to the Public Health Act, 1875, is repealed by the Local Government Act, 1894.

(2.) Provided that in default of such representation by the council of 51 52 Vict., any county or borough before the first day of November one thousand c. 41.

eight hundred and eighty-nine, the Local Government Board may cause such local inquiry to be made, and thereupon may make such order as they may deem expedient.

(3.) Provided that if the order alters the boundary of a county or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

(4.) Where such order alters the boundary of a borough, it may, as consequential upon such alteration, do all or any of the following things, increase or decrease the number of the wards in the borough, and alter the boundaries of such wards, and alter the apportionment of the number of councillors among the wards, and alter the total number of councillors, and in such case, make the proportionate alteration in the number of aldermen.

(5.) At any time before the appointed day, the Local Government Board may make an order in pursuance of this section without any such representation as in this section mentioned.

Note. Alteration of county and borough boundaries. â Sect. 36 (5) of the Local Government Act, 1894, provides that where, for the purposes mentioned in that section, an alteration of the boundary of any county or borough seems expedient, application shall be made to the Local Government Board under the present section. And sect. 54 of that Act requires certain arrangements to be made as to the government of any parish affected by an order of the Local Government Board under the present section extending or diminishing the area of an urban district.

As to the boundaries of administrative counties, see sect. 50 and the note to that section. As to borough boundaries, see the note to sect. 36 of the Local Government Act, 1894, ante, pp. 184, 185.

Sect. 55.â (1.) Where the Local Government Board make a Provisional Order for uniting two county boroughs, such Order may make provisional order them one borough and one county for the purposes of this Act. two county" 8 (2.) Such Order, and also any other Order under this Act for uniting boroughs, boroughs, whether county boroughs or not, may also contain such provisions as may seem necessary or proper for regulating the division of the combined borough into wards, the number of councillors to be elected for each ward, and the first election of the council of the combined borough, and for providing for the clerks of the peace, coroners, town clerks, and officers of the boroughs, and the application to them of the provisions of this Act as to existing officers, and for providing for all matters incidental to or consequential on the union of the boroughs.

(3.) When any such Provisional Order is confirmed, it shall be lawful for Her Majesty to grant a commission of the peace and court of quarter sessions to the combined borough in like manner as to any other borough under the Municipal Corporations Act, 1882, and the Provisional Order may contain such provisions as

appear necessary or proper for regulating all matters incidental to such grant, and to the changes caused by the union of the boroughs in matters connected with such commission or court or otherwise with the administration of justice.

Note. County boroughs.â With regard to county boroughs, see the note to sect. 50, ante. p. 374.

Sect. 56. Where a petition is presented to Her Majesty the Queen by Procedure for the inhabitant householders of any town or towns or district, in pursuance charter of new of the Municipal Corporations Act, 1882, for the grant of a charter of wu s-incorporation, notice of such petition shall be given to the county council of the county in which such town, towns, or district is or are situate, and shall also be sent to the Local Government Board, and the Privy Council 51 52 Vict, shall consider any representations made by such county council or the c. 41. Local Government Board, together with the petition for such charter.

Note. New borough. â With regard to new boroughs, see sect. 54 of the Local Government Act, 1894, and the note to that section, ante.

Future alteration Sect. 57.â (1.) Whenever a county council is satisfied that a prima of county dis- facie case is made out as respects any county district not a borough, or as and wards and S respects any parish, for a proposal for all or any of the following things; future establish- that is to sayâ nient of urban ( a ) the alteration or definition of the boundary thereof; districts.) ftie division thereof or the union thereof with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish; (c.) the conversion of any such district or part thereof, if it is a rural district, into an urban district, and if it is an urban district, into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts; (d.) the division of an urban district into wards; and (e.) the alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards, the county council may cause such enquiry to be made in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department, or other Government Department as may be prescribed, and such other enquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards, shall come into operation upon being finally approved by the county council.

(3.) In any other case the order shall be submitted to the Local Government Board; and if within three months after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, or any number of county electors registered in that district or in any ward of that district, not being less than one sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one sixth of the total number of electors

in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not.

(4.) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order.

(5.) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary for carrying into effect the objects of the order.

(6.) An order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament.

(7.) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

Note. Application of section under the Local Government Act, 1894.â Under sub-sect. (1) of sect. 36 of the Local Government Act, 1894, every county council, and it is to be observed that the expression county council 51 52 Vict. in that Act includes the council of a county borough, are for the purpose of c. 41.

carrying that Act into effect in certain cases of overlapping boundaries and the like, to take every such case in their county into consideration, and whether any such proposal has or has not been made as mentioned in the present section, as soon as practicable in accordance with the present section, to cause inquiries to be made and notices given, and to make such orders, if any, as they deem most suitable for carrying that Act into effect in accordance with certain provisions contained in that sub-section.

By sub-sect (10) of the same section it is provided that, subject to the provisions of that Act, any order made by a county council in pursuance of Part III. of the Local Government Act, 1894, shall be deemed to be an order under the present section.

Under that Act, therefore, county and county borough councils will in certain cases and for certain purposes be able to exercise their powers under the present section of their own motion without any proposal having been made to them. And the present section will apply to orders of such councils made for various purposes other than those mentioned in the section. Sect. 40 of that Act, however, provides that certain orders of a county council under that Act shall not require submission to or confirmation by the Local Government Board.

Sect. 36 (8) of the same Act expressly provides that parishes may be dealt with under the present section whenever it seems expedient for the purposes of that Act. The object of this enactment is by no means apparent; it certainly seems quite superfluous.

The powers of a county council to make orders under sect. 36 of the last mentioned Act for the purpose of bringing that Act into operation will, by sub-sect. (12) of that section, at the expiration of two years after the passing of the Act, or such further period as the Local Government Board may allow, be transferred to that Board. Certain further provisions of the Local Government Act, 1894, as to the present section are referred to below.

Parishes and County Districts.âThe expression "county district is by sect. 100 I in effect defined as meaning, for the purposes of the present section, till the Local Government Act, 1894, comes into operation, a sanitary district, and afterwards a



county district under that Act. The boundaries of parishes and sanitary districts are discussed in the note to sect. 36 of that Act. 2

Wards. â With regard to the wards of an urban district, see the note to sect. 51.

Prescribed notices, inquiries, &c.â The Local Government Board, in pursuance of this section and of sect. 87 (4), which enacts that, " where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board," issued regulations with regard to the various matters to be prescribed under this section on the 14th September, 1889.

Under sect. 80 (2) of the Local Government Act, 1894, however, the Local Government Board have made regulations for expediting and simplifying the procedure under the present section in all cases in the year 1894 for the purpose of bringing that Act into immediate operation. These regulations will be found, ante pp. 171-175.

The operative parts of the regulations issued in 1889 are as follows:â

Article I.â "(1.) Prior to any order being made by a county council in regard to a proposal for all or any of the things specified in sub-sect. (1) of sect. 57 of the Local Government Act, 1888, a local inquiry, at which all persons interested may attend and be heard, shall be held in regard to the proposal as the council may direct, either by a committee of the county council, or by some person appointed by the county council to hold such inquiry.

(1) See ante, p. 245. (2) Ante pp. 175-185.

51 52 Vict. " (2.)â If the proposal relate to one or more county districts, the said C. 41. inquiry shall be held at some convenient place in such district or in one of such districts; and if the proposal relate to a parish or parishes, the said inquiry shall be held either in such parish or in one of such parishes, or at such place in the neighbourhood as may, in the opinion of the committee or person by whom the inquiry is to be held, be most convenient for the purpose.

"(3.) Before the day when the inquiry is to be held, public notice of the purport of the proposal, and of the day, time, and place fixed for the inquiry in reo-ard to it, shall be given by the county council by advertisement in two successive weeks in some local newspaper circulating in the locality to which the proposal relates."

Article II.â " At least fourteen days before the day when the inquiry is to be held, a printed notice of the purport of the proposal, and of the day, time, and place for the inquiry shall also be published in the manner hereinafter described, and shall be sent to the several Government Departments and local or other authorities hereinafter specified; that is to say,â

"(1.) A copy of the said notice shall be posted as a bill or placard in such places in the county district or districts or parish or parishes interested in the proposal as are ordinarily made use of for posting public or parochial notices. " (2.) In any case where the proposal relates to the alteration of or other dealing with any sanitary district, a copy of the notice shall be sent by the county council to the sanitary authority of such district. " (3.) In any case where the proposal relates to the alteration of or other dealing with any parish, a copy of the notice shall be sent by the county council to the overseers of the poor of such parish; to the guardians of the poor of the union in which such parish is comprised; to the School Board (if any) for such parish or for any part

thereof; to the highway authority or authorities of the parish; to the Burial Board (if any) for such parish or for any part thereof; and to the urban sanitary authority (if any) in whose district such parish or any part thereof is comprised. " (4.) A copy of the notice shall be sent by the county council to any local authority which, in the opinion of the county council, is specially interested in the proposal. " (5.) A copy of every such notice shall be sent by the county council to the Local Government Board; and in any case where the proposal relates to all or any of the things mentioned in paragraphs (a), (6), and (c), of sub-sect. (1) of sect. 57 of the said Act, a copy of the notice shall be sent by the county council to the Public Works Loan Commissioners, the Director-General of the Ordnance Survey at Southampton, and to the Registrar-General; and in any case where the proposal relates to the alteration or definition of the boundary of any parish a copy of the notice shall be sent to the Education Department." Article III.â " Public notice of the provisions of any order made by a county council under sub-sect. (1) of sect. 57 of the said Act shall be given by the county council by advertisement in two successive weeks in some local newspaper circulating in each district or parish affected by the order; and the first of such advertisements shall be published within fourteen days after the making of the order.

"The said advertisement shall contain either a copy of the order or a statement of the effect of the order, and shall also contain a statement of the time and place or places during and at which copies of the order may be inspected by any owner or ratepayer in any area affected by the order during a period of one month from the date of the first publication of such advertisement, and the order shall be open for such inspection during such period."

Article IV.â " A copy of any order made as aforesaid by a county council shall, at any time while copies of the order are open to inspection as aforesaid, and, in the case of an order which requires to be confirmed by the Local

Government Board, at any time before the confirmation of the order by the 51 52 Vict. Local Government Board, be supplied by the clerk to the council to any owner c. 41.

or ratepayer in any area affected by the order, upon payment by such owner or ratepayer of a sum not exceeding threepence for each hundred words of manuscript if the copy of the order be in writing, or upon payment of a sum not exceeding threepence for a printed copy of the order."

Article V.â "On or before the date of the first publication of the advertisement in pursuance of Article III. hereof of the provisions of any order made as aforesaid, and, in the case of any such order which does not require to be confirmed by the Local Government Board, one month at least before the order is finally approved by the county council under the said sub-sect. (2) of sect. 57 of the said Act, three copies of the order shall be forwarded to the Local Government Board and to each of the other Government Departments to whom a copy of the notice of the inquiry relative to the proposed order was, by Article II. of this order, required to be sent; a copy of the order shall also be sent to each of the local or other authorities to whom a copy of such notice was so required to be sent, and a copy shall also be posted in like manner as the notice of the inquiry was, in pursuance of the same Article, required to be posted."

Article VI.â "The first advertisement in pursuance of Article III. hereof of the provisions of any order made by a county council under the said sub-sect. (1) of sect. 57 of the said Act shall be deemed to be the ' first notice ' for the purposes of sub-sect. (3) of that section."

Article VII.â " The expression ' county council' in this order shall include a joint committee appointed under sect. 81 of the said Act by any county councils of administrative counties for the purpose of dealing under sect. 57 of the said Act with a matter in which such councils are jointly interested."

By sect. 36 (7) of the Local Government Act, 1894, notice of an order dealing with parish boundaries proposed to be made after the appointed day is to be given to the parish council, or if there is no parish council to the parish meeting.

Petition against Order of County Council. â A right to petition against an order for the alteration of the boundary of any parish, or the division thereof, or the union thereof or of any part thereof with another parish, is by sect. 36 (7) of the Local Government Act, 1894, given to the parish council, or if there is no parish council to the parish meeting. Sect. 36 (10) of the same Act gives a right of petition against the order of a county council in certain cases to any board of guardians affected by the order.

By sect. 41 of the same Act it is provided that the time for petitioning against an order under the present section shall be six weeks instead of three months after the notice referred to in sub-sect. (3) of the present section.

Areas in two or more counties. â By sect. 36 (11) of the Local Government Act, 1894, it is provided that where any of the areas referred to in the present section is situate in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situate in two or more counties, a joint committee appointed by the councils of those counties shall, subject to the terms of delegation, be deemed to have and to always have had power to make orders under the section with respect to that area. By sect. 54 of the present Act the Local Government Board are enabled, upon the representation of a county or borough council, to effect the alteration of any area of local government partly situate in their county or borough.

Validity of orders duly confirmed. â By sect. 42 of the Local Government Act, 1894, provisions are made rendering an order of a county council under the present section confirmed by the Local Government Board unimpeachable after the lapse of six months from the confirmation.

Parishes affected by alteration of urban district. â Sect. 54 of the Local Government Act, 1894, requires certain arrangements to be made with reference to the government of a parish affected by the extension or diminution of an urban district under the present section.

Powers of Local Government Board. â As to the powers of that Board  
Appendix I.

51 52 Vict, referred to in sub-sect. (7), see the note to sect. 36 of the Local Government c. 41. Act, 1894, ante, pp. 179-183.

Additional power Sect. 58. The Local Government Board, where it appears expedient of Local Govern- so to do with reference to any poor law union which is situate in more ment Board as to t ian one coun ty instead of dissolving the union,



may by order provide that the same shall continue to be one union for the purposes of indoor paupers or any of those purposes, and shall be divided into two or more poor law unions for the purpose of out-door relief, and may by the order make such provisions as seem expedient for determining all other matters in relation to which such union is to be one union or two or more unions.

Note. Union boundaries. â By sect. 36 (6) of the Local Government Act, 1894, an order of a county council under Part III. of that Act may, where the alteration of a poor law union seems expedient by reason of any of the provisions of that Act, provide for such alteration in accordance with the present section or otherwise. With regard to union boundaries, see further the note to that section, ante, p. 184.

Supplemental provisions as to alteration of 51 52 Vict. c. 10.

Sect. 59.â (1.) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient.

(2.) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form part of that county for all purposes, whether sheriff, lieutenant, custos rotulorum, justices, militia, coroner, or other; Provided thatâ (a.) Notwithstanding this enactment, each of the entire counties of

York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and (6.) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner; but, if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose; and (c.) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rentcharge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(3.) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888, or this Act, continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place.

(4.) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,â (a.) may provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the 51 52 Vict.

election of representatives in such area, and may extend to any c. 41.

altered area the provisions of any local Act which were previously in force in a portion of the area; and (b.) may make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and (c.) may provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and (d.) may provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and (e.) may adjust any property, debts, and liabilities affected by the scheme or order. (5.) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.

(6.) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order. Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act.

Note. Application of section. â The present section will apply to any order made by a county council under Part III. of the Local Government Act, 1894, seeing that by sect. 36 (10) of that Act, any order made by a county council in pursuance of that part is, subject to the provisions of that Act, to be deemed to be an order under sect. 57 of the present Act. By sect. 69 of the same Act it is moreover provided that where an alteration of area is made by that Act, an order for any of the matters mentioned in the present section may, if it appears to the county council desirable, be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils; but that section is not to empower a county council or joint committee to alter the boundaries of a county.

Sect. 60. In every alteration of boundaries effected under the authority General provision of this Act, care shall be taken that, so far as practicable, the boundaries as to alteration of of an area of local government shall not intersect the boundaries of any boundaries, other area of local government.

Sect. 61. Appointment of commissioners s.

Note. Appointment and powers of commissioners. â By the present section certain persons were appointed commissioners for the purpose of effecting certain financial adjustments and determining certain disputes. 1 Their powers were, under the present section, to continue till the 31st December, 1890; they were, however, continued by the Expiring Laws Continuance Acts, 1890 and 1891, and did not expire till the 31st March, 1893.

(1) As to the powers of the Commissioners, see ss. 32, 40 (7), 62 (1) (5), and 64 (1) (c).

51 52 Vict. Sect. 62.â (1.) Any councils and other authorities affected by this Act c. 41. or by any scheme, order, or other thing made or done in pursuance of this

Adjustment of Act, may from time to time make agreements for the purpose of adjusting property and any property, income, debts, liabilities, and expenses, so far as affected liabilities. y ia Act or such scheme, order, or thing, of the parties to the agreement, and the agreement and any other agreement authorized by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or-without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the commissioners under this Act or the Local Government Board.

(2.) In default of an agreement as to any matter requiring adjustment for the purpose of this Act, or any matter which, in case of difference, is to be referred to arbitration, then, if no other mode of making such adjustment or determining such difference is provided by this Act, such adjustment or difference may be made or determined by an arbitrator appointed by the parties, or in case of difference as to the appointment, appointed by the Local Government Board.

(3.) An arbitrator appointed under this Act shall be deemed to be an 8 9 Vict. c. 18. arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and, further, the arbitrator may state a special case, and notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

(4.) Any award or order made by the Commissioners or any arbitrator under this Act may provide for any matter for which an agreement might have provided.

(5.) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of the county or borough fund or out of such other special fund as the council, with the approval of the Commissioners under this Act or of the Local Government Board, may direct.

(6.) The payment of any capital sum required to be paid for the purposes of the adjustment or of an agreement under this Act, or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act, 1852, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorized to borrow, and such



sum may be borrowed without the consent of the Treasury or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act.

(7.) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Note. Application of section. â The present section would appear to apply in the case of an order of a county council made under Part III. of the Local Government Act, 1894, inasmuch as by sect. 36 (10) of that Act, such an order is to be deemed to be an order under sect. 57 of the present Act. 51 52 Vict. Whether this is so or not is, however, in view of the provisions of sect. 68 c. 41.

of that Act, which contains, with reference to adjustments required for the purposes of that Act, provisions very similar to those contained in the present section, not a question of much practical importance.

Sect. 63. Arbitration of Local Government Board."

Note. Application of section. â The present section has no application to â any of the matters mentioned in the present part of the Act, and is therefore omitted.

53 54 Vict, c. 65.

THE ALLOTMENTS ACT, 1890.

53 54 Vict. c. 65.

An Act to provide for an Appeal from a Sanitary Authority failing to carry into effect the Allotments Act, 1887. 18th August, 1890.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction and Sect. 1. This Act shall be construed as one with the Allotments Act T short title. igg7 (in this Act referred to as the principal Act), and the principal Act 00 51 Vict- and this Act may be cited together as the Allotments Acts, 1887 and 1890, and this Act may be cited as the Allotments Act, 1890.

Appeal to county Sect. 2.â (1.) Where such representation as is authorised by section two couldil by 0 f tne p r i ne ipal Act has been made to the sanitary aul hority with respect ? o e m 0 a n ke r n epre ed to au y district or parish, not being within the limits of a borough as sentation to sani-defined by the Municipal Corporations Act, 1882, and any six persons tary authnrit '. qualified to make such representation consider that the circumstances of 45 46 Vict. the district or parish are such as to make it the duty of the sanitary authority to take proceedings under that Act therein, and that the sanitary authority have failed to acquire land adequate and suitable in quality and position to provide a sufficient number of allotments, such persons may petition the county council of the county in which such district or parish is situate, stating the facts and requesting the council to put into force the principal Act for the purpose of providing a sufficient number of allotments for the district or parish.

(2.) The council, if satisfied by the inquiry herein-after mentioned tint the circumstances are such that land for allotments should be acquired, shall pass a resolution

to that effect, and thereupon the powers and duties of the sanitary authority under the principal Act, so far as regards that district or parish, shall be transferred from the sanitary authority to the county council, and the county council, in substitution for the sanitary authority, shall proceed to acquire land in accordance with the principal Act, and otherwise execute that Act in the said district or parish.

Provided that this section shall not affect the property in, or any powers or duties of the sanitary authority in relation to, any land which before the passing of the said resolution was acquired by the sanitary authority under the principal Act.

Note. Representation and petition by parish council. â By sect. 6 (3) of the Local Government Act, 1894, it is provided that a parish council shall have the same power of making a representation with respect to allotments as is conferred on parliamentary electors by the Allotments Act, 1887, or the present Act. And by sect. 9 (17) of the Local Government Act, 1894, the parish council are given the like power of petitioning the county council as is given to six parliamentary electors by the present Act.

Standing commit- Sect. 3.â (1.) For the purposes of this Act or the principal Act even-tee, county council, as soon as is conveniently practicable after the passing of this Act, and annually thereafter at the meeting for the election of r. i 52 Vict. chairman, shall appoint under the Local Government Act, 1888, a standing c. 41. committee not exceeding one fourth of their whole body.

(2.) For the purpose of any business under this Act relating to any 53 54 Vict district or parish wholly or partly situate in an electoral division, the c. 65.

county councillor representing that division shall, if not already appointed, be an additional member of the committee.

(3 ) Any petition under this Act, shall as of course, and without any order of the council, lie referred to the standing committee, who, on being satisfied of the bona fides of the application, shall forthwith cause a local inquiry into the circumstances to be made, and shall report the result to the council.

(4.) An inquiry under this Act or the principal Act shall be held by such one or more members of the standing committee, or such officer of the county council or other person as the standing committee may appoint to hold the same.

Note. Application of section. â The present section is, subject to adaptations to be prescribed by the Local Government Board, incorporated with sect. 9 of the Local Government Act, 1894, by sub-sect. 13 f that section. It will therefore apply not only where a petition is presented to the county council under sect. 2 of the present Act, but also where application is made to the county council for an order authorising the compulsory purchase of land for allotments or for the purposes of a parish council, and under sect. 10 (1) of the Local Government Act, 1894, where application is made to the county council for an order authorizing the compulsory hiring of land for allotments by a parish council.

Sect. 4. Where the powers of the sanitary authority under the principal Supplemental Act are, by virtue of this Act, transferred to the county council, the provisions on following provisions shall have effect:â c â nul qmnnj (a.) The principal Act shall apply with the modifications necessary for tartautnoruy" giving effect to this Act: (b.) The county council may borrow for the purposes of thi- Act subject to the conditions, in the manner, and on the security of the rate, subject to, in, and on the security of

which the sanitary authority might have borrowed under the principal Act, if this Act had not been passed. The council shall have power to charge the said rate with the repayment of the principal and interest of the loan; and such loan with the interest thereon shall be repaid by the sanitary authority in like manner, and such charge shall have the like effect, as if the loan were lawfully raised and charged on that rate by the sanitary authority: (c.) The county council shall keep separate accounts of all receipts and expenditure under this Act, and, in the application of sub-section six of section ten of the principal Act, the Local Government Act 1952, shall be substituted for the Public Health Act, 1875: c. 41.

(d.) The county council may make a provisional order for the purchase of land on the recommendation of the standing committee, without any petition from the sanitary authority, and the council shall be considered as the promoters of the order: (e.) The county council may delegate to the sanitary authority any powers under section six, section seven, or section eight of the principal Act (which sections relate to the management of the allotments, and the letting and use thereof, and the recovery of the rent and of possession thereof); and, subject to the terms of the delegation, all expenses and receipts arising in the exercise of the powers so delegated shall be paid and dealt with as expenses and receipts of the sanitary authority under the principal Act: (f.) The county council, on the request of the sanitary authority, may, by order under their seal, transfer to that authority all or any of the powers, duties, property, and liabilities vested in and imposed on the council by virtue of this Act as regards the district of such authority or any part thereof, and the property so transferred shall be deemed to have been acquired by that authority under the principal Act, and that authority shall act accordingly.

53 54- Vict. Note. Purchase of land by county council. â Sub-sect. (17) of sect. 9 of c. (35) of the Local Government Act, 1894, provides that where, under the present

Act, the Allotments Act, 1887, applies to the purchase of land by the county-council, that Act shall apply as amended by that section.

Sub-sect. (14) of the same section provides that any land purchased by a county council for allotments under the Allotments Acts, 1887 and 1890, or the Local Government Act, 1894, or any of them, shall be assured to the parish council, and that in that case sects. 5 to 8 of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority.

It would seem that these provisions, besides modifying the present section in other respects, impliedly repeal paragraphs (e) and (f) wherever land is acquired on behalf of a parish with a parish council.

Use of school Sect. 5. Any room in a school receiving a grant out of moneys provided for by Parliament may, except during ordinary school hours, be used free of charge for the purpose of an inquiry under this Act, or for the purposes of this Act by the county council or any committee appointed under this Act, or, with the consent of any two managers, for the purpose of holding public meetings to discuss any question relating to allotments under this Act or the principal Act, but any damage done to the room and any expense incurred by the person or persons having control over the room on account of its being so used shall be paid by the county council or by the persons calling the meeting.



Nothing in this section shall give any right to hold a public meeting in a schoolroom (a) unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation to the local authority under the principal Act, has been given, if the school is under a school board, to the clerk of the board, and in any other case to one of the managers of the school; nor (b) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting.

If the persons calling the meeting fail to obtain the use of a schoolroom under this section, they may appeal to the standing committee under this Act, and the committee shall forthwith decide the appeal and make such order respecting the use of the room as seems just.

Note. Use of schoolroom. â Sect. 4 of the Local Government Act, 1894, contains provisions as to the use of schoolrooms, and of rooms the expense of maintaining which is payable out of any local rate, for, inter alia, various purposes connected with allotments.

Expenses. Sect. 6.â (1.) All expenses incurred by the county council in executing the principal Act or this Act in any district or parish on default of a sanitary authority, or incurred by the council in or incidentally to a local inquiry under this Act, shall be paid in the first instance out of the county fund as for general county purposes, and, unless defrayed out of moneys received by the council in respect of any land acquired under this Act otherwise than by sale or exchange, or out of money borrowed as before in this Act mentioned, shall, when the powers and duties of the sanitary authority under the principal Act are transferred to the county council in pursuance of this Act, be repaid to the county council as a debt by the sanitary authority.

(2.) All sums payable by a sanitary authority in pursuance of this Act shall be defrayed in like manner as expenses under the principal Act are required to be defrayed, save that in the case of a rural authority they shall, with the exception of the principal and interest of any money borrowed, or the rent of any land hired by the county council be charged 53 54 Vict, as general expenses. c. 65.

(a.) All sums received by a county council in respect of any land acquired under this Act otherwise than by sale or exchange, in so far as they are not required for the payment of expenses incurred by them in respect of such land, shall be paid to the sanitary authority, and in the case of a rural sanitary authority shall be credited to the parish on account of which the land was acquired.

Note. Expenses of county council. â Where, in consequence of proceedings under the present Act, the county council proceed to acquire land compulsorily under sect. 9 of the Local Government Act, 1894, it may be that the expenses of the county council should be regarded as expenses incurred under that section; so that sub-sect. (19) of that section would apply in lieu of the present section. There appears, however,

to be nothing in the Local Government Act, 1894, to modify the provisions of the present Act as to the expenses of the county council in cases where they acquire land by agreement; though the effect of the present section where the land is assured to the parish council and let in allotments by them under sect. 9(14) of the Act of 1894, will be very peculiar.

56 57 Vict, c. 61.

#### THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.

56 57 Vict. c. 61.

An Act to generalize and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties. 5th December, 1893.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Protection of Sect. 1. Where after the commencement of this Act any action, persons acting in prosecution, or other proceeding is commenced in the United Kingdom execution of "â r, Â. â Â i i statutory or other against any person for any act done in pursuance, or execution, or intended public duty. execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect: (a.) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof: (o.) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client: (c.) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action: id.) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client. This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

Note. Protection of persons acting under statute, c. â It has long been not unusual to insert in an Act of Parliament a clause containing provisions for the protection of persons acting in the execution of the Act in question, at of some specified duty or authority, more or less similar in scope to those contained in the present section. The object of the present Act is to substitute for such clauses the present comprehensive section, which applies to all statutes and to all public duties and authorities.

With reference to a clause of the kind, 1 Blackburn, J., said: " It has long 56 57 Vict. been decided that such a provision as that contained in this section is intended c. 61.

to protect persons from the consequences of committing illegal acts, which are intended to be done under the authority of an Act "f Parliament, but which, by some mistake, are not justified by its terms, and cannot be defended by its provisions." 2

It is well established that protection under such clauses can only be claimed by persons who exceed their powers, where they have acted in the bond fide belief that they were justified by law in what they did. 3

In some cases it has been laid down that such provisions apply only where the defendant believes in the existence of a state of facts which, had they â existed, would have been a defence. 4 In the cases in which this principle has been laid down, however, the protection of the clause in question was claimed for a member of the general public. On the other hand, persons acting in public capacities have frequently been held entitled to the protection where they have been mistaken as to the law and not as to the facts; and in a case already referred to, 5 Blackburn, J., said, "Neither in *Hermann v. Seneschal*, nor in *Roberts v. Orchard*, was it decided that a defendant would not be entitled to notice of action, because he had been mistaken in the law." a

Provisions of the kind under discussion, have been held to apply only to. actions of tort or quasi tort, and not to extend to actions for the enforcement of a contract. 7

In conection with this subject reference may also be made to the cases cited below. 8

Sect. 2. There shall be repealed as to the United Kingdom so much of Repeal, any public general Act as enacts that in any proceeding to which this Act appliesâ (a.) the proceeding is to be commenced in any particular place; or (6.) the proceeding is to be commenced within any particular time; or (c.) notice of action is to be given; or (d.) the defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event; or (e.) the defendant may plead the general issue; and in particular there shall be so repealed the enactments specified in the schedule to this Act to the extent in that schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act.

(1) Highway Act, 1835 (5 0 24 L. T. 736; 19 W. R. 931. Will. IV. c. 50) s. 109, repealed by (5) *Selmes v. Judge*, ubi sup.

the present Act. (6) Cf. *Davies v. Curling* (1845), (2) *Selmes v. Judge* (1871), L. R. 8 Q. B. 286; 15 L. J. Q. B. 56; 43 Q. B. 724, at p. 727; S. C. 19 10 Jur. 69; *Smith v. Hopper* (1847), W. R. 1110; S. C. nom. *Judge v. 9 Q. B. 1005*; 16 L. J. Q. B. 93; *Selmes*, 40 L. J. Q. B. 287; 24 L. T. 11 Jur. 302; *Hardwick v. Moss* 904. (1861), 7 H. N. 136; 31 L. J. Ex.

(3) See e. g. *Booth v. Clive* (1851), 205; 7 Jur. (n. s.) 804; 4 L. T. 802. 10 C. B. 827; 20 L. J. C. P. 151; (7) *Fletcher v. Greenwell* (1835), 15 Jur. 563. 4 D. P. C. 166; S. C. mm. *Fletcher* (4) *Hermann v. Seneschal* (1862), v. *Greenwood*, 1 Gale, 34; *Davies v. 13 C. B. (n. s.) 392*; 32 L. J. C. P. *Swansea Mayor, c.)* (1853), 8 Ex. 43; 6 L. T. 646; 11 W. R. 184; 808; 22 L. J. Ex. 297.



Roberts v. Orchard (1863), 2 H. C. (8) Kirby v. Simpson (1854), 10 7b'9; 33 L. J. Ex. 65; S. C. nom. Ex. 358; 23 L. J. M. C. 165; 18

Orchard v. Roberts, 9 L. T. 727; Jur. 983; Anew v. Jobson (1877), 12 W. R. 253; Heath v. Brewer 13 Cox 0. C. 625; 47 L. J. M. C. 67; (1864), 15 C. B. (n. s.) 803; 9 L. T. Bryson v. Russell (1884), 14 Q. B. 1.

653; Chamberlain v. King (1871), 720; 54 L. J. Q. B. 144; 52 L. T.

L. R. 6 C. P. 474; S. C. nom. King v. 208; 33 W. R. 34; 49 J. P. 293. Chamberlain, 40 L. J. C. P. 273;

Appendix I.

56 57 Vict. c. 61.

Commencement.

Short title.

Note. Repeals. â The schedule to the Act, which comprises portions of more than a hundred Acts, is too lengthy for inclusion in the present work.

Sect. 3 Saving as to Scotland."

Sect. 4. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

Sect. 5. This Act may be cited as the Public Authorities Protection Act, 1893.

30 31 Vict. c. 130.

APPENDIX II.

CONTAINING

Enactments relating to the powers and duties of justices and quarter sessions transferred to district councils by sect. 27 of the Local Government Act, 1894, arranged according to the arrangement of subjects in that section.

Licensing of Gangmasters.

THE AGRICULTURAL GANGS ACT, 1867.

30 31 Vict. c. 130.

An Act for the Regulation of Agricultural Gangs. 20th August, 1867.

Sect. 1. Short title."

Sect. 2. Commencement of Act: repealed, Statute Law Revision Act, 1893.

Sect. 3. The following words and expressions shall in this Act have Definition or the meanings hereby assigned to them, unless there is something in the terms context inconsistent with such meanings; that is to say,

"Child " shall mean a child under the age of thirteen years:

"Young Person" shall mean a person of the age of thirteen years and under the age of eighteen years:

"Woman " shall mean a female of the age of eighteen years or upwards:

"Gangmaster" shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation; and, until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them shall be deemed to have been hired with the aforesaid view:

"Agricultural Gang" shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster.

Sect. 4. The following regulations shall be observed by every gang- Regulations as to master with respect to the employment of children, young persons, gangs.

and women: (2.) No female shall be employed in the same agricultural gang with males: (3.) No female shall be employed in any gang under any male gang-master unless a female licensed to act as gangmaster is also present with that gang: And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed.

Note. Repeal. â Sub-sect. (1), which provided that no child under the age of eight should be employed in any agricultural gang, was repealed by the

#### Appendix II

Gangmasters to be licensed.

Licences not to be granted to keepers of public houses.

Licences to gangmasters.

30 31 Vict. Agricultural Children Act, 1873, 1 which raised the age to ten. That Act was c. 130. repealed by the Elementary Education Act, 1876, 2 which contains general provisions as to the employment of children. 3

Sect. 5 No person shall act as a gangmaster unless he has obtained a licence to act as such under this Act.

Any person acting as a gangmaster without a licence under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts.

Sect. 6. No licence shall be granted to any person who is licensed to sell beer, spirits, or any other excisable liquor.

Sect. 7. Licences to gangmasters shall be granted by two or more justices in divisional petty sessions, on due proof to the satisfaction of such justices that the applicant for a licence is of good character, and a fit person to be intrusted with the management of an agricultural gang.

The justices shall annex to their licence a condition limiting, in such manner as they think expedient, the distances within which the children employed by such gangmaster are to be allowed to travel on foot to their work, and any gangmaster violating the condition so annexed to his licence shall for each offence be liable to a penalty not exceeding ten shillings.

Any person aggrieved by the refusal of the justices to grant him a licence to act as gangmaster may appeal to the next practicable court of general or quarter sessions; and it shall be lawful for such court, if they see cause, to grant a licence to the applicant, which shall be of the same validity as if it had been granted by the justices in petty sessions.

Sect. 8. Licences under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original licence is granted.

Sect. 9. There shall be charged in respect of each grant or renewal of licence a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the licence are applicable.

Sect. 10. On any conviction of a gangmaster of any offence against this Act the justices who convict him shall endorse on his licence the fact of such conviction; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding three months; and on any conviction of any gangmaster of a third offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding two years.

And after a fourth conviction for an offence against this Act the gangmaster shall be disqualified from holding or receiving a licence under this Act.

Sect. 11. Penalties under the Act recoverable, summarily."

Sect. 12. This Act shall not apply to Scotland or Ireland.

Renewal of licences.

Fees in respect of licences.

Licence how affected by conviction of gangmaster.

Extent of Act.

(1) 36 37 Vict, repealed.

(2) 39 40 Vict.

(3) lb. ss. 5, 6, 9; and see the Elementary Education Act, 1880 (43 44 Vict. c. 23) s. 4.

35 36 Vict, c. 93.

Grant of Pawnbrokers' Certificates.

THE PAWNBROKERS ACT, 1872.

35 36 Vict. c. 93.

An Act for consolidating, with Amendments, the Acts relating to Pawnbrokers in Great Britain. 10th August, 1872.

Sect. 40. Certificates under this Act shall all be granted (as regards Certificates to be granted in the metropolitan police district by a magistrate sitting in any court granted by police court in the metropolis having jurisdiction in the district where the application is made, and in any place within the jurisdiction of a stipendiary magistrate or that magistrate, and in other places by the justices of the petty sessional division assembled at petty sessions specially convened for that purpose.

Note. Pawnbrokers' Certificates, & By sect. 37 every pawnbroker within the meaning of the Act is required to take out an excise licence annually; and by sect. 39 such a licence is not to be granted, save in the case of a person being at the commencement of the Act a licensed pawnbroker, or of the executors, administrators, assigns or successors of such a person, except on the production and in pursuance of the authority of a certificate granted under the Act.

Sect. 41. A certificate under this Act shall be in the form given in the Form and

Sixth Schedule to this Act, or to the like effect, and shall be in force for duration of, certificate, one year from its date.

Note. Form of Certificate. & The form for England given in the schedule is as follows:

I or we here insert description of the magistrate or justices' do hereby certify that I or we do authorise the grant to A. B. of in



the county of of a licence to carry on the business of a pawnbroker within the township of or parish of or other place as the case may be".

Witness my hand or our hands this day of, 18.

Sect. 42. A person intending to apply for the first time for a certificate Notice of first under this Act shall proceed as follows:â application.

(11) Twenty-one days at least before the application he shall give notice by registered letter sent by post of his intention to one of the overseers of the poor of the parish or place in which he intends to carry on business, and to the superintendent of police of the district, and shall in the notice set forth his name and address: (2.) Within twenty-eight days before the application lie shall cause a like notice to be affixed and maintained between icn o'clock in the morning and five o'clock in the afternoon of two consecutive Sundays, on the principal door or one of the doors of the ohurch or chapel of the parish or place, or if there is none, then on some other public and conspicuous place in the parish or place.

Sect. 43. An application for a certificate shall not be refused, except on Grounds of the following grounds, or one of them: certificate (1.) That the applicant has failed to produce satisfactory evuh nee of good character; (2.) That the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place owned or occupied by liim, is frequented by thieves or persons of bad c aractei; (3.) That he has not complied with the last preceding section.

35 36 Vict. Sect. 52. If any person thinks himself aggrieved by any conviction or c. 93. order of a court of summary jurisdiction under this Act, or by the refusal

Appeal to Â f a certificate for a licence, he may appeal therefrom, subject to the con- quarter sessions, ditions and regulations following: (1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, held not less than fifteen days and (unless adjourned by the court) not more than four months after the decision or refusal appealed from: (2.) The appellant shall within seven days after the cause of appeal has arisen give notice to the other party and to the court or authority appealed from of his intention to appeal and the ground thereof: (3.) The appellant shall immediately after such notice enter into a recognizance before a justice with two sufficient sureties conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice allows: (4.) Where the appellant is in custody the justice may, if he thinks fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody: (5.) The court of appeal may adjourn the appeal; and, upon the hearing thereof, they may confirm, reverse, or modify the decision or refusal appealed from, or remit the matter with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and I may make such order as to costs to be paid by either party as the court thinks just.

Note. Repeal. â 'l he present section is repealed from the words "for the county " to the end of the section, except so far as relates to an appeal against the refusal of a certijeate for a licence, by the Summary Jurisdiction Act, 1884. 1

Saving for local I Sect. 57. Nothing in this Act shall repeal or in any manner interfere Actb with the operation of any local or local and personal Act for the time being in force in any city, town, burgh, or other place.

Licensing of Dealers in Game.

THE GAME ACT, 1831.

Note. Short title. â The use of this short title is authorized by the Short Titles Act, 1892. 1 1 2 Will. 4, c. 32.

An Act to amend the Laivs in England relative to Game.

5th October, 1831.

What shall be Sect. 2. The word " Game " shall for all the purposes of this Act be deemed game. deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards.

Justices to hold a Sect. IS. The justices of the peace of every county, riding, division, yearly for grant- l l Dertv franchise, city, or town shall hold a special session in the division (1) 47 48 Vict. c. 43, s. 4, and schedule. (2) 55 Vict. c. 10.

or district for which they usually act, in every year in the month of July,- Will. 4, for the purpose of granting licences to deal in game, of the holding of c. 32.

which session seven days' notice shall he given to each of the justices mg licences to acting for such division or district; and the majority of the justices pwsons to deal in assembled at such session, or at some adjournment thereof, not being less b'ame. than two, are hereby authorized (if they shall think fit) to grant, under their hands, to any person being a householder or keeper of a shop or stall within such division or district, and not being an innkeeper or victualler, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail coach, or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a licence according to the form in the schedule (A.) annexed to this Act, empowering the person to whom such licence shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this Act, and also to sell the same at one house, shop, or stall only, kept by him; provided that every person, while so licensed to deal in game as aforesaid, shall affix to Dealers in game some part of the outside of the front of his house, shop, or stall, and shall Â Â Â ' U P a there keep, a board having thereon in clear and legible characters his Christian name and surname, together with the following words, (that is to say,) " Licensed to deal in Game; " and every such licence granted in any year shall continue in force for the period of one year next after the granting thereof.

Mote. Date for granting Licences.â By an Act of 1839 l the justices were enabled to hold special sessions for the purpose of granting licences to deal in game at any time in the manner directed by the Game Act, 1831, and under and subject to the provisions and regulations thereof " provided always, that of the holding of any such special session seven days' notice shall be given to each of the justices "acting for the division or district in which such session is intended to be held; provided also, that every licence to deal in game, at whatever time the same hath been or shall be granted, shall continue in force from the granting thereof until the first day of July then next following, and no longer."

The Game Licences Act, 1860, 2 provides that all the clauses and provisions of the Game Act, 1831, and the above-mentioned Act of 1839, " relating to the granting of licences by justices of the peace to deal in game, and to the holding of special sessions. for the purpose of granting such licences. shall, so far as the same are consistent with the express provisions of this Act, and as the same are altered or amended by this Act, extend to and be of full force and effect in and throughout the whole of the United Kingdom, and shall be observed, applied, and enforced as if the same, so altered or amended and made consistent with. the express provisions of this Act, had been herein repeated and specially enacted."

The Act of 1839 was repealed by the Revenue Act, 1869; 3 but it would seem that the provisions it contained as to the grant of game dealers' licences remain in force by virtue of the above-quoted provisions of the Game Licences Act, 1860.

Sect. 21. Provided always, that persons being in partnership, and p Â s as to carrying on their business at one house, shop, or stall only, shall not par be obliged by virtue of this Act to take out more than one licence in any one year to authorise them to deal in game at such house, shop, or stall.

(1) 23 Vict. c. 35, s. 4, now (2) 23 24 Vict. c. 90, s. 13.

repealed. (3) 32 33 Vict. c. 14.

1 2 Will. 4, c. 32.

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SCHEDULE (A.).

Form of Licence.

At a Special Session of the Justices of the Peace of the County of or riding, c, as the case mat be', acting for the division of or otherwise, as the case may be in the said county, holden at in the said on the day of in the year. We being Justices acting for the said assembled at the said special session, do hereby authorise and empower A. B. of here insert the name, description, and place of residence, and if more than one in partnership, say CD. of, fyc. and E. F. of, Â c. being partners, being a householder or householders, or keeper (or keepeis) of a shop or stall, as the case may 6c, to buy game from any person authorised to sell game by virtue of an Act passed in the second year of the reign of King William the Fourth, intituled " An Act to amend the laws in England relative to game; " and we do also authorise and empower the said A. B. or CD. and E. F. being partners to sell at his or their house shop or stall any game so bought, provided that the said A. B. or CD. and E. F. being partners shall affix to some part of the outside of the front of his or their house shop or stall, and shall there keep, a board having thereon in clear and legible characters his Christian name and surname, o their Christian names and surnames, together with the following words, "Licensed to deal in Game." This licence will expire on (Signed), Justice of the Peace.

, Justice of the Peace.

Licensing of Passage Brokers and Emigrant Kunners.

THE PASSENGERS ACT, 1855.

18 19 Vict. c. 119.

An Act to amend the law relating to the carriage of passengers by sea.

14th August, 1855.



Sect. 3. For the purposes of this Act, the following words and expressions, whenever they occur, shall respectively have the following signification, if not inconsistent with the context or subject matter; (that is to say,). "Emigrant Runner" shall signify every person other than a licensed passage broker or his bond fide salaried clerk, who within any port or place of shipping, or within five miles of the outer boundaries thereof, for hire or reward, or the expectation thereof, shall directly or indirectly conduct, solicit, influence, or recommend any intending emigrant to or on behalf of any passage broker, owner, charterer, or master of a ship, lodging house or tavern or shop keeper, money changer, or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or shall give or pretend to give to such intending emigrant any information or assistance in any way relating to emigration.

No person to act Sect. 66. No person whatever shall directly or indirectly act as a hire or reward passage broker in respect of passages from the United Kingdom to licence. ' any place out of Europe, and not being within the Mediterranean Sea.

or shall sell or let, or agree to sell or let, or be in anywise concerned in the sale or letting of passages in any ship, whether a "passenger ship" or otherwise, proceeding from the United Kingdom to any such place as aforesaid, unless such person, with two good and sufficient 18 19 Vici.

sureties to be approved by the emigration officer at the port nearest to the c. 119.

place of business of such person, shall have previously entered into a joint and several bond in the sum of one thousand pounds to Her Majesty, according to the form contained in Schedule (D.) hereto annexed, which bond shall be renewed on each occasion of obtaining such licence as herein-after mentioned, and shall be in duplicate, without stamps, and one part thereof shall be deposited at the office of the said Emigration

Commissioners now the Board of Trade and the other part thereof with the emigration officer at the port nearest to the place of business of such person; nor unless such person shall have obtained a licence, as herein-after mentioned, to let or sell passages, nor unless such licence shall then be in force; and if any person shall offend in any particular against this enactment, every person so offending shall for each offence be liable to a penalty not exceeding fifty pounds nor less than twenty pounds, to be sued for and recovered as herein-after mentioned: Provided that such bond shall not be required of any person who shall be one of the sworn brokers of the city of London: Provided also, that there shall be no objection to the said

be excepted from the operation of this section the said Emigration gentleman of passage

Commissioners now the Board of Trade and any persons contracting brokers exempt-."

with them, or acting under their authority, and also any person acting as from this section.

the appointment of any passage broker in pursuance of an appointment made in the form prescribed by Schedule (I.) hereto annexed, signed by such passage broker, and countersigned by such emigration officer as aforesaid:

Provided further, that the Acts and defaults of any person acting under Passage-jwokers authority or as agent of any passage broker shall, for the purposes of the Act, be deemed to be also the acts and defaults of such

passage broker: Provided also, that nothing herein-before contained shall be held or construed to prevent the said emigration officer from accepting the bond of a guarantee society, such bond and such guarantee society mo. as shall have been approved by the Treasury, in lieu of the bond of two good and sufficient securities as aforesaid.

Sect. 67 Any person wishing to obtain a licence to act as a passage broker in respect of passages from the United Kingdom to any place oke 'obtained out of Europe, and not being in the Mediterranean Sea, shall make may application for the same to the justices at the petty sessions held for the district or place in which such person shall have his place of business; and such justices are hereby authorized (if they shall think fit) to grant a licence for that purpose, according to the form in the Schedule (E.) hereunto annexed, which licence shall continue in force until the thirty-first day of December in the year in which such licence J â e A to, ve. shall be granted, and for thirty-one days afterwards, unless sooner tfen'ajmmis- ' forfeited, as herein mentioned; and upon granting such licence the sionera of licence justices shall cause a notice thereof according to the form in Schedule granted. (F.) hereto annexed to be transmitted forthwith by the post to the said Emigration Commissioners now the Board of Trade: Provided always, that no such licence shall be granted unless the party applying for the same shall show to the satisfaction of the justices that he Lias emicra-given such bond to Her Majesty, as herein-before required, and has "coiini'ii-" deposited one part thereof at the office of the said Commissioners now the sinners of to-Botrd of Trade, or is a sworn broker of the city of London, and has in tended applica-either case given notice to the said Commissioners now the Board 0 f tlon for llcences-Trade fourteen clear days at least before such application of his intention to apply for the same, which notice shall be transmitted by the post to the office of the said Commissioners now the Board ol Trade, and shall be according to the form contained in the Schedule (G.) hereto annexed: Provided also, that any justices of the peace who shall fs SaÂ SÂ adjudicate on any offence against this Act, or on any breach or non-to-be forfeitrt performance of any of the requiements thereof, are hereby authorized, if who snail give they shall think fit, and the offender is a passage broker, to order his notice of the licence to be forfeited, and the same shall thereupon be fcorli ited rowm!"-â " accordingly; and the said justices making such order shall forthwith sioners. cause notice of such forfeiture, in the form contained in the Schedule (H.)

## Appendix II.

IS 19 Vict, hereunto nnnexed, to be transmitted by the post to the said commission-ers c. 119. now the Board of Trade.

Note. Omitted part of section. â The omitted portion of the section relates to Scotland.

l'enalty on persons acting as runners without licence and badge, and on passage brokers & â ruploying them.

Mode of licensing and registering

Emigrant runner's licence to be renewed annually.

Sect. 75. Any person who shall act as an " Emigrant Runner " without having previously been licensed and registered as herein-after mentioned, or who while so acting shall omit to wear conspicuously on his breast such badge as herein-after mentioned, or who shall employ as an "Emigrant Runner" any person not duly licensed

and registered, shall for each offence be liable to a penalty not exceeding five pounds nor less than twenty shillings.

Sect. 76. The justices of the peace at any petty sessions held for the district or place within which any person wishing to act as an "Emigrant Runner" is to carry on his business may upon the recommendation in writing of an emigration officer or of the chief constable or other head officer of police of such district or place (but not otherwise) grant, if they shall think fit, to such person wishing to act as runner a licence for that purpose according to the form in Schedule (M.) hereto annexed, and such runner shall within forty-eight hours thereafter (under a penalty not exceeding forty shillings for any default) lodge such licence with the nearest emigration officer, who shall register the name and abode of such runner in a book to be kept for that purpose, and shall number each name registered in arithmetical progression, and shall supply to such runner, on his paying a sum not exceeding seven shillings for the same, a badge of such form and description as shall be approved by the said Emigration Commissioners now the Board of Trade.

Sect. 77. Every such "emigrant runner's" licence shall continue in force until the thirty-first day of December in the year in which it shall be granted, unless sooner revoked by any justice of the peace for any offence against this Act or for any other misconduct committed by the holder of such licence. In case of any renewed licence it shall be sufficient for the emigration officer to note the fact, and the date of the renewal, in his registry book against the original entry therein of the name of the runner holding such renewed licence.

SCHEDULE (D.) full, with occupations and address of each of the parties.

Form of Passage Broker's Annual Bond, with Two Sureties, to be approved by the emigration officer at the Nearest Port.

Insert Christian Know all men by these presents, that we, A. B. of CD.

and surnames in O f, c. and E. F. of, C. are held and firmly bound unto our Sovereign by the Grace of God of the United

Kingdom of Great Britain and Ireland Defender of the Faith, in the sum of one thousand pounds of good and lawful money of Great Britain, to be paid to our said the heirs and successors; to which payment well and truly to be made we bind ourselves and every of us, jointly and severally, for and in the whole, our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals Dated this day of one thousand eight hundred and fifty

Whereas by the Passengers Act, 1855, it is amongst other things enacted, that no person whatever, save as therein excepted, shall directly or indirectly act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, or shall sell or let, or agree to sell or let, or be in any wise concerned in the sale or letting of passages in any ship, whether a "passenger ship" or otherwise, proceeding 18 19 iet. from the United Kingdom to any such place as aforesaid, unless such person,-â. 119.

with two good and sufficient sureties, to be approved by the Emigration Officer at the port nearest the place of business of such person, shall have previously entered into a joint and several bond to Her Majesty, her heirs and successors, in the sum of



one thousand pounds: And whereas the said CD. and E. F. have been duly approved by the proper Emigration Officer as sureties for the said A. B.:

Now the condition of this obligation is such, that if the above-bounden A. B., and every agent whom he may employ in his business of a passage broker, shall well and truly observe and comply with all the requirements of the said recited Act, so far as, the same relate to passage brokers, and further shall well and truly pay all fines, forfeitures, and penalties, and also all sums of money, by way of subsistence money, or of return of passage money and compensation, to any passenger, or on his account, together with all costs which the above-bounden A. B., or any of his agents as aforesaid, may at any time be adjudged to pay under or by virtue of any of the provisions of the said recited Act, then and in such case this obligation to be void, otherwise to remain in full force.

Signed, sealed, and delivered by the above-bounden A. B., CD., and E. F., in the presence of Insert the names and

N. B.â This bond is to be executed in duplicate, in the presence of and to be witnessed and attested by an emigration officer or his assistant, or an officer of customs, or a magistrate, or a notary public. One part is to be deposited with the Emigration Commissioners now the Board of Trade in London, and the other part with the emigration officer at the port nearest to the place of business of the broker. Each member of a firm or partnership who acts as a passage broker must give a separate bond with two sureties.

The bond is exempt from stamp duty, but must be renewed annually with the licence.

#### SCHEDULE (E).

##### Form of Passage Broker's Licence.

A. B. of in the having shown to the satisfaction of me or us the undersigned, that he hath given bond to and surnames in

Majesty, as by the Passengers Act, 1855, required, and also given fourteen Sies- siuidttade days' previous notice to the Emigration Commissioners now the Board of,, r occupation of

Trade of his intention to make application for a licence to carry on the the party apply- business of a passage broker in respect of passages from the United Kingdom jngforthe , l = â,,, r. p, â,,-Â, j. J l licence, must be to any place out of Europe, and not being within the Mediterranean sea, l torre ctlj' in- or we, the undersigned, having had no sufficient cause shown to me or us, sserted. If a and seeing no valid reason why the said A. B. should not receive such licence, member of a do hereby licence and authorise the said A. B. to carry on the business of a and passage broker as aforesaid until the end of the present year, and thirty-one names of all the days afterwards, unless this licence shall be sooner determined by forfeiture members must for misconduct on the part of the said A. B. as in the Passengers Act, 1855, is be S lven- provided.

Given under my hand and seal or our respective hands and seals, this 1 Justices of the peace, police, or stipendiary magistrate, or sheriff, or steward, or sheriff or steward substitute, as the case may be.

N. B.â Each member of a firm or partnership who acts as a passage broker must have a separate licence.

Appendix II.

18 19 Vict, c. 119.

SCHEDULE (F).

Insert the Christian and surnames in full, with the address and occupation., of the party.

Form of Notice to be given to the Emigration Commissioners now the Board of Trade by Justices granting a Licence.

Gentlemen,

This is to give you notice that we or I, the undersigned, did on the day of 185 license A. B. of to carry on the business of a passage broker under the provisions of the Passengers Act, 1855.

Signatures ("Justices of the Peace, or as the case may be.

Place-

Date-

To the Emigration Commissioners now the Board of Trade London.

SCHEDULE (M).

The Christian and surnames in full, with the address of the party applying for the licence, must lie here correctly inserted.

f City, town, or district in which the emigrant runner is to carry on his business.

Form of Emigrant Runner's Annual Licence.

A. B. of in the having made application in writing to us, the undersigned Justices of the Peace assembled in petty sessions, for the f of to grant to him a licence to enable him to be registered as an emigrant runner in and for f, and the said A. It. having also been recommended as a proper person to receive such licence by an emigration officer, or by the chief constable or other Head Officer of Police, as the case may be of the district, town, or place, in which the said A. B. is to carry on his business": We, the under-mentioned justices, having no sufficient cause shown to us, and seeing of ourselves no valid reason why the said A. B. should not receive such licence, do hereby grant to him this licence for the purposes aforesaid, subject nevertheless to be revoked for misconduct on the part of the said A. B., as in the Passengers Act, 1855, is provided.

Title. Definition of

Secretary of State may, on representation of magistrates, with consent of owner, order fair to be abolished

Abolition of Fairs, and Alteration of Days for Holding Fairs.

THE FAIRS ACT, 1871.

34 Vict. c. 12.

An Art to further amend the Law relating to Fairs in England and Wales. 25th May 1871.

Sect. 1. This Act may be cited as " The Fairs Act, 1871." Sect. 2. In this Act the term " owner " means any person or persons, or body of commissioners, or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands

or tenements, or under any charter, letters patent, or Act of Parliament, or otherwise howsoever.

Sect. 3. In case it shall appear to the Secretary of State for the Home Department, upon representation duly made to him by the magistrates of any petty sessional district within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be abolished, it shall be lawful for the said Secretary of State for the Home Department, with the previous consent in writing of the owner for the time being of such fair, or 34 Vict. c. 12. of the tolls or dues payable in respect thereof, to order that such fair shall be abolished accordingly: Provided always, that notice of such representation, and of the time when it shall please the Secretary of State for the Home Department to take the same into consideration, shall be published once in the London Gazette, and in three successive weeks in some other newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered.

Sect. 4. When and so soon as any such order as aforesaid shall have been made by the Secretary of State for the Home Department, notice of the making of the same shall be published in the London Gazette, and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall be abolished.

THE FAIRS ACT, 1873. 36 37 Vict. c. 37.

An Act to amend the Law relating to Fairs in England and Wales.

7th July, 1873.

Sects. 1, 2. Short title: Act not to extend to Scotland or Ireland."

Sect. 3. In this Act the term "owner" means any person or persons, or body of commissioners or body corporate, entitled to hold any fair, whether in respect of the ownership of lands or tenements, or under any charter, letters patent, or otherwise howsoever.

Sects. 4, 5. Commencement of Act: Repeal of the Fairs Act, 1868 repealed, Statute Law Revision Act, 1883, and Statute Law Revision (No. 2) Act, 1893.

Sect. 6. In case it shall appear to a secretary of state, upon representation duly made to him by the justices acting in and for the petty sessional division within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be held in each year on some day or days other than that or those on which such fair is used to be held or on the day or days on which such fair is used to be held and any preceding or subsequent day or days, or on or during a less number of days than those on which such fair is used to be held, it shall be lawful for a secretary of state to order that such fair shall be held on such other day or days, or on the same day or days and any preceding or subsequent day or days, or on or during any less number of days as he shall think fit: Provided always, that notice of such representation and of the time when it shall please a secretary of state to take the same into consideration shall if such representation shall have been made



by justices be given to the owner of such fair, and shall if such representation shall have been made by the owner of such fair be given to the clerk to the justices acting in and for the petty sessional division within which such fair is held, and shall also be published once in the London Gazette, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper" published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered.

Sect. 7. When and so soon as any such order as aforesaid shall have been made by a secretary of state, notice of the making of the same shall be published in the London Gazette and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall only be held on the day or days mentioned in such order; and it shall be lawful for the

All rights, of owner of such fair to take all such toll or tolls, and to do all such act or owner to remain acts, and to enjoy all and the same rights, powers, and privileges in regard respect thereof, and enforce the same by all and the like remedies, as if the same were held on the day or days upon which it was used to be held previous to the making of such order.

Infant Life Protection.

THE INFANT LIFE PROTECTION ACT, 1872.

35 36 Vict. c. 38.

An Act for the better Protection of Infant Life. 25th July, 1872.

Interpretation Sect. 1. The term "court of summary jurisdiction" means and includes any justice or justices of the peace, sheriff or sheriff substitute, metropolitan police magistrate, stipendiary or other magistrate or authority, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable:

In this Act the words "local rate," "local jurisdiction," and "local authority," mean, in reference to the districts mentioned in the first column of the First Schedule annexed hereto, the rate, jurisdiction and authority mentioned in the second, third, and fourth columns of the said schedule, and such schedule and the notes thereto annexed shall be deemed to be part of this Act.

Note. Repeal. The first part of the present section which defined the expression "Summary Jurisdiction Acts," was repealed by the Statute Law Revision (No. 2) Act, 1893, having become unnecessary in view of the definition of that expression contained in the Interpretation Act, 1889.

Sheriff or Sheriff Substitute. These words relate to the application of the Act in Scotland.

Houses of persons Sect. 2. It shall not be lawful for any person to retain or receive for hire retaining or re- or reward in that behalf more than one infant, and in case of twins more than two or more than two infants under the age of one year for the purpose of nursing or infants for the maintaining such infants apart from their parents for a longer period than purpose of nursing twenty-four hours, except in a house which

has been registered as herein provided. Provided-Register of names Sect. 3. The local authority shall cause a register to be kept in which and houses to be shall be entered the name of every person applying to register any house for kept by local the purposes of this Act, and the situation of every such house, and the local authority. authority shall from time to time make byelaws for fixing the number of infants who may be received into each house so registered; the registration shall remain in force for one year; no fee shall be charged for registration. Every person who receives or retains any infant in contravention to the provisions of this Act shall be guilty of an offence against this Act. Local authority Sect. 4. The local authority may refuse to register any house, unless they may refuse to be satisfied that such house is suitable for the purposes for which it is to register. be registered, and unless they are satisfied by the production of certificates that the person applying to be registered is of good character, and able to maintain such infants. Persons whose Sect. 5. The person registered as aforesaid shall immediately enter in names and a register to be kept by him the name, sex, and age of each infant under houses are regis- (1) 52 53 Vict. c. 63, s. 13 (8, 9, 10).

liis care, and the date at which and the names and addresses of the 33 36 Vict, persons from whom they were received, and shall also enter in the said c. 38.

register the time when and the names and addresses of the person by tered to keep a whom every such infant received and retained as aforesaid shall be register of infants removed immediately after the removal of such infant, and shall produce? and to produce the said register when required to do so by the local authority; and in required. " y the event of his refusing so to produce the said register or neglecting to enter in a register the name, sex, and age of each of the said infants, and the date at which and the names and addresses of the persons from whom they were received and by whom they were removed respectively, shall be liable to a penalty not exceeding five pounds. The person registered shall be entitled to receive gratuitously from the local authority a book of forms for the registration of infants; such register may be in the form contained in the second schedule to this Act.

Sect. 6. If any person shall make false representations with a view to Forgery of certi-being registered under this Act, or shall forge any certificate for the pur- j resteter " pose of this Act, or make use of any forged certificate, knowing it to be forged, or shall falsify any register kept in pursuance of this Act, he shall be guilty of an offence against this Act.

Sect. 7. If it shall be proved to the satisfaction of the local authority that Local authority. any person whose house has been so registered as aforesaid has been guilty ma, y b strike Â ame of serious neglect, or is incapable of providing the infants intrusted to his register for â care with proper food and attention, or that the house specified in the neglect, c. register has become unfit for the reception of infants, it shall be lawful for the local authority to strike his name and house off'the register.

Sect. 8. The person registered as aforesaid shall within twenty-four Inquest to be hours after the death of every infant so retained or received cause notice j nt" detil thereof to be given to the coroner for the district within which the said infant died, and the said coroner shall hold an inquest on the body of every such infant unless a certificate under the hand of a registered medical practitioner shall be produced to

him by the person so registered certifying that such registered medical practitioner has personally attended or examined such infant, and specifying the cause of its death, and the said coroner shall be satisfied by such certificate that there is no ground for holding such inquest. If the person so registered shall neglect to give notice as aforesaid he shall be guilty of an offence under this Act.

Sect. 9. Every person guilty of an offence under this Act shall be liable to punishment for or imprisonment for not more than six months, with or without hard labour, or to a fine not exceeding five pounds, as a court of summary jurisdiction may award, and shall in addition be liable to have his name and house struck off the register.

Sect. 10. All expenses incurred in and about the execution of this Act shall be paid out of the local rate.

Sect. 11. Any offence under this Act may be prosecuted before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts: Provided as follows:

The court of summary jurisdiction, when hearing, trying, determining, and adjudging an information or complaint in respect of any offence or matter arising under this Act, shall be constituted either of two or more justices of the peace in petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

Note. Repeal. The omitted portion of the present section was repealed by the Summary Jurisdiction Act, 1884. 1

Sect. 12. Any moneys arising from fees or fines under this Act shall be applied to the account of the local rate, and be applied to the purposes to which that rate is applicable.

(1) 47 & 48 Vict. c. 43, s. 4, and schedule.

Appendix II.

35 & 36 Vict. Sect. 13. The provisions of this Act shall not extend to the relatives or guardians of any infant retained or received as aforesaid, nor to institutions

Exceptions from established for the protection or care of infants, nor to any person receiving provisions of any infant for the purpose of nursing or maintaining such infant under Act the provisions of any Act for the relief of the poor.

Sect. 14. Application of Act to Scotland."

Sect. 15. Commencement of Act: repealed, Statute Law Revision (No. 2) Act, 1893. J

Sect. 16. Short Title.

THE FIRST SCHEDULE REFERRED TO IN THE FOREGOING ACT.

England.

District.

Local Jurisdiction. Local Authority.

Counties, except the county of London and the city of London and the metropolitan district.

The metropolitan.

City of London and the liberties thereof.



Boroughs.

Rate or fund applicable to the payment of the general expenses of the board.

Consolidated sewers rate.

The borough fund or borough rate.

Petty sessional division.

Area of the metropolis.

Area of the city of London and the liberties thereof.

Area of borough.

Justices in petty sessions.

The Metropolitan Board of Works.

Common council.

Council.

"County" shall not include a county of a city or county of a town, but shall include any riding, division, parts, or liberty of a county having a separate commission of the peace.

Where a county or liberty of a county having a separate commission of the peace is not divided into petty sessional divisions, such county or liberty of a county shall itself for the purposes of this Act be deemed to be a petty sessional division of the county by which it is constituted or in which it is geographically situate.

"The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, exclusive of the city of London and the liberties thereof.

"Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act made to provide for the Regulation of Municipal Corporations in England and Wales," and having a separate court of quarter sessions.

Every place that is not, according to the foregoing definitions, a borough, a county, or part of the metropolis, or city of London, or the liberties thereof, shall be deemed to form part of the county, as hereinbefore defined, to the county rate of which it is assessed, or, if not so assessed, of the county within 35 30 Vict which it is situate. C. 3S.

Note. Omitted part of Schedule. â The omitted part of the schedule relates to Scotland and Ireland.

THE SECOND SCHEDULE REFERRED TO IN THE FOREGOING ACT.

Register of Infants.

Date at which received.

Name.

Sex.

Age.

Name and Address of Person from whom received.

Date at Name and Address which 1 (il Person by removed. whom removed.

Licensing of Knackers' Yards.

THE KNACKERS ACT, 1786.

Note. Short Title. â This short title is authorized by the Short Title Act, 1892. 1 26 Geo. 3, c. 71.

An Act for regulating houses and other places kept for the purpose of slaughtering horses.

"Whereas the practice of stealing horses, cows, and other cattle hath of Preamble late years increased to an alarming degree, and hath been greatly facilitated by certain persons of low condition who keep houses or places for the purpose of slaughtering horses and other cattle: for remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twentieth day of July in the year of our From July 20,

Lord one thousand seven hundred and eighty-six, no person or persons 1786, every shall keep or use any house or place for the purpose of slaughtering or "j Sng- killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, couse to take out heiler, calf, sheep, hog, goat, or other cattle, which shall not be killed for a license, c.

butcher's meat, without first taking out a licence for that purpose at the general quarter sessions held for the county, riding, city, town, district, division, or liberty wherein such slaughtering house or place shall be situate; and the justices of the peace, at their general quarter sessions assembled, are hereby authorized and empowered to grant such licences as aforesaid, upon a certificate under the hands and seals of the minister and church (1) 55 Vict. c. 10.

## Appendix II.

26 Geo. 3, c. 71.

Justices to grant licences, which are to be entered, c.

Persons licensed to affix to their houses the words herein mentioned.

wardens, or overseers, or of the minister and two or more substantial householders of the parish wherein the person or persons applying for such licence shall dwell, that such person or persons is or are fit and proper to be trusted with the management and carrying on such business as aforesaid: provided always, that in case of the death of any person to whom such licence as aforesaid shall be granted, it shall and may be lawful for the widow or personal representative of such person so dying to carry on the said business until the then next ensuing general quarter sessions of the peace.

Note. Duration of Licence. By an Act of 1844, 1 it is provided that a licence under the Knackers Act, 1786, "shall be granted, and shall continue in force, for a period not exceeding one year from the date at which the same was granted, determinable as hereinafter provided: Provided nevertheless, that in the case of the renewal of any such licence to any person to whom any such licence may have been previously granted. it shall not be necessary for such person to obtain or produce to the justices. a certificate under the hands and seals of the ministers, churchwardens, overseers, or householders, as required by " The Knackers Act, 1786.

Cancelling of Licence. The Act of 1844, 2 further provides that it shall be lawful for the quarter sessions "upon application and complaint made to them in writing by any person, and upon due proof being made to them that the party so complaining had given fourteen days' previous notice in writing thereof to the clerk of the peace. and also to the party complained against, and upon due proof to their satisfaction that any person so licensed as aforesaid has been guilty of any breach or violation " of The Knackers Act, 1786, or of a certain Act of 1835, 3 "or of this Act. to cancel and

wholly put an end to any and every licence which may have been granted to the person or persons so complained against."

The Act of 1835 was repealed by the Cruelty to Animals Act, 1819.

Repeal. â The present Act and the amending Act of 1881 were repealed as regards London by the Public Health (London) Act, 1891. 5

Sect. 2. And every such licence shall be signed by the justices of the peace assembled at such general quarter sessions, or by the major part of them; and a copy of every such licence shall be entered in a book to be kept for that purpose by the clerk of the peace of the county wherein the same shall be so granted as aforesaid; and all and every person and persons shall have liberty at all times (Sundays excepted), between the hours of ten and twelve of the clock in the forenoon, to search the office of such clerk of the peace wherein any such copy shall be entered or kept, and to make an extract or extracts from the same, paying for every such search the sum of sixpence; and all and every person and persons so licensed as aforesaid shall cause to be painted or affixed over the door or gate of the house or place where lie, she, or they shall carry on the said business, in large legible characters, his, her, and their name and names with the words licensed for slaughtering horses, pursuant to an Act passed in the twenty-sixth year of his Majesty King George the third.

Note. Penalty. â The Cruelty to Animals Act, 1849, 6 provides that persons failing to comply with the present section as regards causing their names to be painted or affixed, c, shall be subject to a penalty.

(1) 7 8 Vict. c. 87, s. 1.

(3) 5 6 Will. IV. c. 59, now repealed.

(4) 12 13 Vict. c. 92."

(5) 54 55 Vict. c. 76, s. 142. (Jo) 12 13 Vict. c. 92, s. 7.

### APPENDIX III.

#### CIRCULARS OF THE LOCAL GOVERNMENT BOARD.

Circular Letter to Guardians and Urban Sanitary Authorities other than Town Councils as to the Local Government Act, 1894.

L5th March, 1804. Sib,

I am directed by the Local Government Board to draw attention to the provisions of the Local Government Act, 1894, which has this day received the Royal Assent, in so far as they affect the election of guardians and members of urban sanitary authorities during the present year.

Under the Act, urban and rural district councils will take the place of urban and rural sanitary authorities, and parishes in any rural district will be represented on the board of guardians by the persons elected as rural district councillors, guardians as such being only elected in parishes in urban districts.

The first elections under the Act of guardians and district councillors will be held on the 8th November next or on such later date or dates in the year 1894 as the Board may fix, and the persons elected will come into office on the second Thursday next after their election, or such other day not more than seven days earlier or later as may be fixed by or in pursuance of rules made by the Board in relation to their election.

Upon the day on which the first guardians and urban or rural district councillors elected under the Act come into office, the persons who are then members of boards



of guardians or urban or rural sanitary authorities will cease to hold office; but until that day the persons who at the passing of the Act were guardians or members of urban sanitary authorities for districts other than boroughs will continue in office notwithstanding any want of qualification, as if the term of office for which they were elected expired on that day, and except for the purpose of filling casual vacancies, or of electing additional guardians, where the number is increased, no further elections will be held.

Hence, the guardians and members of urban sanitary authorities who would have gone out of office in April next but for the passing of the Act, will continue in office until November and will then retire, and the elections which would otherwise have been held in April will not take place. No further steps, therefore, should be taken with a view to any such election.

I am, Sir, your obedient Servant,

Hugh Owen, Secretary. The Clerk to the Guardians or Urban Sanitary Authority.

Circular Letter to Highway Boards in England and North Wales as to the Local Government Act, 1894.

9th March, 1894.

Sir,

I am directed by the Local Government Board to draw the attention of the Highway Board to certain provisions of the Local Government Act, 1894.

District councils will under the Act be elected for rural districts, and will take the place of the present rural sanitary authorities.

Section 25 of the Act provides that there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of any highway authority in the district, that highway boards shall cease to exist, and that rural district councils shall be the successors of the highway authority. It is, however, enacted that the council of any county may by order postpone within their county, or any part thereof, the operation of this section, so far as it relates to highways, for a term not exceeding three years, or such further period as may, on the application of the county council, be allowed by the Board. The effect of this provision will be that the Highway Board will cease to exist on the day on which the first rural district councillors come into office, and the rural district council will thereupon become the highway authority, unless the county council postpone the operation of the section within their county or the part thereof comprising the district of the Highway Board.

Section 84 provides that the first elections of district councillors under the Act shall be held on the 8th November next, or (in such later date or dates in the present year as the Board may fix, and that the persons elected shall come into office on the second Thursday after their election, or such other day not more than seven days earlier or later, as may be fixed by or in pursuance of the rules made by the Board under the Act in relation to the election of those councillors.

By section 79, persons who, at the passing of the Act, are members of highway boards are continued in office until the day on which the first rural district councillors elected under the Act come into office, as if the term of office for which they were elected expired on that day. and consequently the usual annual election of waywardens will not take place in the present year.

An order under section 25 is, by section 84, to make such provision as may be necessary for holding elections of highway boards in the interval during which the operation of section 25 is postponed. This provision will enable the county council to give directions in their order for the election of waywardens in place of those who will cease to hold office as mentioned above, when the rural district councillors come into office, and also to order for what period such waywardens shall be elected, having regard to the period of postponement.

As regards the position of the officers of highway boards that will cease to exist under the Act, the Board direct me to state that section 81 provides that where the powers and duties of any authority other than justices are transferred by the Act to any district council, the officers of that authority shall become the officers of that council, and that every such officer shall hold his office by the same tenure, and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore. The section also provides that section 120 of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by the new Act, as if references in the section to the county council were references to the authority whose officer the person affected is when the claim for compensation arises.

At the same time, the Board may draw the attention of the Highway Board to sub-section (2) of section 86 of the Act, under which it will be the duty of every authority whose powers, duties, and liabilities are transferred by the Act to liquidate so far as practicable before the day on which the transfer takes effect, all current debts and liabilities incurred by the authority; and to sub-section (2) of section 85, under which the accounts of the Highway Board before that day will be audited in the same manner as if the Act had not passed, and for the purpose of the audit the Highway Board and their accounting officers will, until the audit is completed, be deemed to continue in office and be bound to perform the same duties and render the same accounts, and be subject to the same liabilities as before the transfer.

I am, Sir, your obedient Servant,

Hugh Owen, Secretary. To the Clerk to the Highway Board.

Circular Letter to Highway Boards in South Wales as to the Local Government Act, 1894.

12a March, 1894.

Sir,

I am directed by the Local Government Board to draw the attention of the Highway Board to certain provisions of the Local Government Act, 1894.

District councils will under the Act be elected for rural districts, and will take the place of the present rural sanitary authorities.

Section 25 of the Act provides that there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of any highway authority in the district, that highway boards shall cease to exist, and that rural district councils shall be the successors of the highway authority. It is, however, enacted that the council of any county may by order postpone within their county, or any part thereof, the operation of this section, so far as it relates to highways, for a term not exceeding three years, or such further period as may, on the application of the county council, be

allowed by the Board. The effect of this provision will be that the Highway Board will cease to exist on the day on which the first rural district councillors come into office, and the rural district council will thereupon become the highway authority, unless the county council oppose the operation of the section within their county or the part thereof comprising the district of the Highway Board.

Section 84 provides that the first elections of district councillors under the Act shall be held on the 8th November next, or on such later date or dates in the present year as the Board may fix, and that the persons elected shall come into office on the second Thursday after their election, or such other day not more than seven days earlier or later, as may be fixed by or in pursuance of the rules made by the Board under the Act in relation to the election of those councillors.

By section 79, persons who, at the passing of the Act, are members of boards of guardians and of highway boards are continued in office until the day on which the first rural district councillors elected under the Act come into office, as if the term of office for which they were elected expired on that day, and consequently the usual annual election of guardians will not take place in the present year. The effect of this enactment will be to continue in office the existing members of highway boards in South Wales until the day referred to.

As regards the position of the officers of highway boards that will cease to exist under the Act, the Board direct me to state that section 51 provides that where the powers and duties of any authority other than justices are transferred by the Act to any district council, the officers of that authority shall become the officers of that council, and that every such officer shall hold his office by the same tenure, and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore. The section also provides that section 120 of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by the new Act, as if references in the section to the county council were references to the authority whose officer the person affected is when the claim for compensation arises.

At the same time, the Board may draw the attention of the Highway Board to sub-section (2) of section 86 of the Act, under which it will be the duty of every authority whose powers, duties, and liabilities are transferred by the Act to liquidate so far as practicable before the day on which the transfer takes effect, all current debts and liabilities incurred by the authority; and to sub-section (2) of section 85, under which the accounts of the Highway Board before that day will be audited in the same manner as if the Act had not passed, and for the purpose of the audit the Highway Board and their accounting officers will, until the audit is completed, be deemed to continue in office and be bound to perform the same duties and render the same accounts, and be subject to the same liabilities as before the transfer.

I am, Sir, your obedient Servant,

Hugh Owen, Secretary. To the Clerk to the Highway Board.

Circular Letter to Metropolitan Vestries and Districts Boards and the Local Board of Woolwich as to the Local Government Act, 1894.

19th March, 1894.

Sir,



I am directed by the Local Government Board to draw attention to certain provisions of the Local Government Act, 1894, affecting the Vestries and District Boards elected under the Metropolis Management Acts, and the Local Board of Woolwich.

Section 31 directs that the provisions of the Act with respect to the qualification of the electors of urban district councillors, and of the persons to be elected, and with respect to the mode of conducting the election, shall apply as if members of the local board of Woolwich, and the vestries elected under the Metropolis Management Acts, 1855 to 1890, or any Act amending those Acts, and the auditors for parishes elected under those Acts were urban district councillors. So far as respects the qualification of persons to be elected, the provisions referred to are also to apply as if members of the district boards under those Acts were urban district councillors; but in other respects the election of members of district boards will be conducted as heretofore.

Under the operation of section 31 of the new Act the electors of the members of the local board of Woolwich, of the vestries under the Metropolis Management Acts, and of the auditors elected under section 11 of the Metropolis Management Act, 1855, will be respectively the parochial electors of the parish of Woolwich and of the parishes for which vestries are elected. Where the area under the jurisdiction of any of the authorities mentioned is divided into wards, the electors for each ward will be such of the parochial electors as are registered in respect of qualifications within the ward. (Section 23 (3).) The expression " parochial elector" when used with reference to a parish in the county of London is defined by section 75 to mean any person who would be a parochial elector of the parish if it were a rural parish, and the parochial electors in a rural parish will under section 2 be the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish. Section 44 of the Act provides for the manner in which the register of the parochial electors of a parish is to be formed.

With respect to the persons to be elected as urban district councillors, it is provided by sub-section (2) of section 23 that a person shall not be qualified to be elected or to be a councillor unless he is a parochial elector of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district, and no person shall be disqualified by sex or marriage for being elected or being a councillor. This provision is made applicable to members of the local board and the vestries and district boards, and to the auditors for parishes, by section 31 of the Act.

In connection with the qualification of persons to be elected, reference should be made to the provisions relating to the disqualification of a person for being elected or being a member of a district council, contained in section 40 of the Act, which by sub-section (y) is made applicable in the case of any authority whose members are elected in accordance with the Act, in like manner as if that authority were a district council, and in the case of London auditors as if they were members of a district council.

An election under the Act will be conducted according to rules to be framed by the Local Government Board. (Section 23 (5) and section 48.) If there is a poll it will have to be taken by ballot.

Copies of the rules for regulating the elections will be forwarded to you when they are issued.

The expenses of any election under the Act are not to exceed the scale fixed by the county council, but if at the beginning of one month before the first election the county council have not framed a scale, the Board may do so, and the scale thus framed will apply to the first election and will have effect as if it had been made by the county council. (Section 48 (7).)

The Elections (Hours of Poll) Act, 1885, will apply to elections of members of vestries under the Metropolis Management Acts. (Section 31 (1).)

Sub-section (5) of section 48 provides that if any difficulty arises as respects the election of any individual member of the local board, or vestry, or auditor, and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

The Act also provides that if any difficulty arises with respect to the holding of the first election of members of the local board or any vestry, or of auditors, or to the first meeting of the local board or vestry, or if, from no election being held or an election being defective or otherwise, the first local board or vestry has not been properly constituted or there are no auditors under the Metropolis Management Acts, 1855 to 1896, or an insufficient number, properly elected, the county council may by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of any such first election and properly constituting the local board, or vestry or auditors, and may, if it appears to them necessary, direct the holding of a meeting or election, and fix the dates for any such meeting or election. Any such order may modify the provisions of the Act, and the enactments applied by, or rules framed under it, so far as may appear to the county council necessary or expedient for carrying the order into effect. (Section 80 (1).)

Section 84 provides that the first elections under the Act shall be held on the 8th of November next, or such later date or dates in the present year as the Board may fix, and that the persons elected shall come into office on the second Thursday next after their election, or such other day not more than seven days earlier or later as may be fixed by or in pursuance of the rules made by the Board under the Act in relation to their election.

By section 79 persons who, at the passing of the Act, are members of the local board and of any vestry under the Metropolis Management Acts, or are auditors under those Acts, are continued in office until the day on which the first members and auditors elected under the Act come into office, as if the term of office for which they were elected expired on that day, and consequently the usual annual election of such members and auditors respectively will not take place until the day appointed for the first elections under the Act. Under sub-sections (3) and (10) of the section, the first annual retirement of members of the local board and vestries first elected under the Act will take place at the date of the annual election in the year 1896; and sub-section (G) provides how the members who are to retire in 1896 and 1897, respectively, are to be determined. Except as regards the present year, the dates for the annual elections

will not be altered by the Act; but, as indicated above, there will lie no annual election in 1895.

The existing local board and the existing vestries are required to take the necessary measures for the conduct of the first elections under the Act of members of the local board and of the vestries respectively, including any appointment of returning officers required by rules made by the Board under the Act. (Section 79 (1) and (10))

After the vestrymen first elected under the Act come into office, no person is ex officio to be chairman of any of the vestries under the Metropolis Management Acts (section 31 (1)), but each of the vestries, except those electing district boards, and each of the district boards and the local board of Woolwich must, at their first meeting after the annual election of members, elect a chairman for the year, and the chairman so elected will, unless a woman or personally disqualified by any Act, be by virtue of his office a justice of the peace for the county of London, but before acting as such justice he must, if he has not already done so, take the oaths required by law to be taken by a justice of the peace, other than the oath respecting the qualification by estate. (Sections 22 and 31 (2).)

The provisions of section 41 of the Metropolis Management Act, 1855, enabling a district board to elect a chairman of the meeting, will apply only in the case of the absence of the chairman of the district board elected under the new Act. (Section 31 (2).)

Nothing in any local or personal Act is to prevent any vestry in the county of London from holding its meeting at such time as may be directed by the vestry. (Section 31 (3).)

Certain provisions of the Metropolis Management Acts which are inconsistent with or are superseded by the provisions above referred to, are repealed by section 89 and the Second Schedule to the new Act.

I am, Sir, your obedient Servant,

Hugh Owen, Secretary. The Clerk to the Vestry or District Board or to the Local Board of Woolwich.

Circular Letter to County Councils, except the London County Council, as to the Local Government Act, 1894.

15th March, 1894.

Sir,

I am directed by the Local Government Board to draw the attention of the County Council to certain provisions of the Local Government Act, 1894, and especially to those under which powers and duties will devolve on the County Council for the purpose of bringing the Act into operation within the county.

Every parish in a rural sanitary district, and in the case of a parish which "is partly within a rural sanitary district, the part within such district, will be for the purposes of the Act a rural parish. For every rural parish there will be a parish meeting, and for every rural parish which according to the census of 1891 has a population of 300 or upwards there will be a parish council, which will be elected by the parliamentary and county electors registered in the portions of the parliamentary and county registers relating to the parish. The parish meeting will consist of these persons, who are in the Act described as the parochial electors.



It is not necessary for the present purpose to set out all the powers which will be possessed by a parish council, but in connection with the duties that will devolve on the county council, it may be noticed that most of the powers of the vestry, in other than ecclesiastical affairs, will be transferred to the parish council, and that where the Lighting and Watching Act, 1833, the Baths and Washhouses Acts, 1846 to 1882, the Burial Acts, 1852 to 1885, the Public Improvements Act, 1860, and the Public Libraries Act, 1892, or any of these Acts (which are referred to as the adoptive Acts), have been put in force in a rural parish before the parish council come into office, that council will be the authority for executing the Acts, if they are in force in the whole of the parish. Section 53 of the Act provides means whereby the parish council may become such authority in a case where the Acts are in force in part of the parish only.

The Act makes important alterations in the qualification, mode of election, and retirement of guardians, and confers on county council new powers in relation to certain matters connected with this subject, which will be explained in a later part of this circular.

Urban sanitary authorities will as from the appointed day be called urban district councils, and their districts will be called urban districts, but the style or title of a town council will not be altered. The mode of election of urban district councillors will, except in a borough, differ from that at present in force, and certain powers are given to county councils in connection with the retirement of urban district councillors. These will be referred to hereafter.

For every existing rural sanitary district wholly comprised in one county there will be a rural district council, whose district will be called a rural district, and where a rural sanitary district is situated in more than one county, such portion of it as is situated in each county will, save as otherwise provided in pursuance of the Act, or of any other Act, be as from the appointed day a rural district. District councillors will be elected for every parish or other area for the election of guardians in a rural district. They will be elected by the parochial electors, and will be the representatives of that parish or area on the board of guardians, and guardians as such will not be elected for that parish or area.

The provisions of the Act with respect to the qualification, election, term of office, and retirement of guardians will apply to rural district councillors. Hence the powers of the county council in relation to these matters, so far as guardians are concerned, will apply in the case of rural district councillors also.

Rural district councils will be substituted for rural sanitary authorities, and will have all the powers and duties of those authorities. They will have certain new powers and duties under the Act, but except in connection with highways, it is unnecessary to draw the attention of the county council to any of these powers or duties. The provisions as to highways are dealt with in a later part of this circular.

The provisions which should first receive the attention of the county council are those contained in Part III. of the Act, which relate to areas and boundaries.

The Act contemplates that every parish and, as a general rule, every rural district shall be wholly within one administrative county, and that, also as a general rule, every parish shall be wholly within one rural or urban district. With a view to secure this result, and to provide for the settling of incidental administrative arrangements

consequent in the alterations of areas which are made by the Act itself, very important duties have been imposed on county councils.

Section 83 makes it the duty of every county council to exercise all such of their powers as may be requisite for bringing the Act into full operation within their county as soon as may be after the passing of the Act.

The first elections under the Act are to be held on the 8th November next, or such later date or dates in the present year as the Board may fix, and the persons elected are to come into office on the second Thursday next after their election, or such other day not more than seven days earlier or later as may be fixed by or in pursuance of rules made by the Board under the Act in relation to their election. (Section 84.) It is important that alterations which may affect the preparation of the lists of voters should be made sufficiently early to enable the lists to be properly prepared, and it is consequently provided by sub-section (3) of section 84 that every division into wards or alteration of the boundaries of any parish or union or district which is to affect the first election shall, if parishes or parts for which the registers of parochial electors will be made are affected, be made, so far as practicable, before the 1st of July next.

Many of the provisions of the Act referred to in this circular are to take effect from the "appointed day." Subject as mentioned in the Act, this day, for the purpose of elections, is defined as the day or respective days fixed for the first elections under the Act, or such prior day as may be necessary for the purposes of giving notices or doing other acts preliminary to such elections, and for the purpose of the powers, duties, and liabilities of councils or other bodies elected under the Act, or other matters not specifically mentioned, it will be the day on which the members first elected come into office.

The powers and duties of county councils, so far as they may have to be exercised either before or in connection with the first elections may be classified under the following heads: I. Areas and Boundaries. II. Parish Councils. III. Guardians and District Councillors. IV. Highways. V. Miscellaneous.

I. Areas and Boundaries.

Sub-section (1) of section 36 provides as follows:

For the purpose of carrying this Act into effect in the case of (a) every parish and rural sanitary district which at the passing of this Act is situate partly within and partly without an administrative county; and (b) every parish which at the passing of this Act is situate partly within and partly without a sanitary district; and (c) every rural parish containing a population of less than 200; and (d) every rural sanitary district which at the passing of this Act has

less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district; and (e) every rural parish which is co-extensive with a rural sanitary district; every county council shall forthwith take into consideration every such case within their county; and whether any proposal has or has not been made as mentioned in section 57 of the Local Government Act, 1888, shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given, and make such orders, if any, as they deem most suitable for carrying into effect the present Act in accordance with the following provisions, namely: (i.) The whole of each parish, and, unless the county council for special reasons otherwise direct, the

whole of each rural district, shall be within the same administrative county; (ii.) The whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district; and (iii.) Every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts. By sub-section (11) of section 3G it is provided that, where at the passing of the Act a rural sanitary district or parish is situated in more than one county, a joint committee of the councils of the several counties comprising the district or parish shall act under the section. The appointment by each county council of representatives on the joint committee is to be made within two months after request from the councils interested. If any of the councils fail to appoint members of the committee within that period, the members actually appointed are to act. Any question relating to the constitution or procedure of the joint committee as to which the councils concerned are unable to agree, is to be determined by the Board.

The first case mentioned in section 36 is that of a parish in more than one administrative county. In many instances of this kind the rural district will also be in more than one county, and the Board have dealt with them later on, in their remarks on cases where the rural district is so situated.

The county council will also have to consider the case of any parish which is not wholly contained within one sanitary district, and these cases include some in which the parish is in more than one county also. If at the passing of the Act, a parish is partly within and partly without a rural sanitary district, that is to say, is partly in such a district and partly in an urban district, and no action is taken by the county council prior to the appointed day, the parish will as from that date be divided by the Act, the part within the rural district and the part without being constituted separate parishes by sub-section (3) of section 1.

Where the part outside the rural district is comprised in more than one urban district, the provisions of sub-section (2) of section 31 referred to below will apply to it.

If the rural part of the parish is deemed too small to form a separate parish, the county council should consider whether it could properly be united with some other rural parish. It would, however, be competent to the county council, if the circumstances justified it, by an order under section 57 of the Act of 1888, to extend any urban district, not being a borough, containing part of the parish, so as to include the rural part of the parish.

If a parish is situated in two or more urban districts, the part in each urban district will, unless the county council otherwise direct, and subject to any alteration of area made by or in pursuance of the new Act or of any other Act, become as from the appointed day, a separate parish. (Section 36 (2).) The county council can either alter the boundary between the urban districts, if neither of them is a borough, so as to include the whole parish within one district, or direct that the parish and urban districts shall remain unaltered, but the latter course would be opposed to the general scheme of the Act, and can only properly be adopted where there are special reasons for it. These observations apply equally to the urban part of a parish situated partly in a rural and partly in two or more urban districts. In any case, such as those mentioned above, where the parish is situated partly in a borough, the boundary of the borough



could be altered by an order of the Board under section 51 of the Local Government Act, 1888. The county council or a joint committee could not properly make an order which would place or leave a parish in more than one county. It would be inconsistent with the Local Government Act, 1888, that an urban district should be in more than one county.

Where a parish is divided by the Act into two or more new parishes, sub-section (9) of section 36 directs that those parishes shall, until it is otherwise provided, be included in the same poor law union in which the original parish was included, and sub-section (1) of section 79 directs that, subject to any order made by the county council, there shall be one guardian, and in the case of a new parish in a rural district, one district councillor for each of the new parishes. Many of the parishes which will be divided by the Act are at present entitled to more than two guardians, and not only in these cases, but in every other to which the above provision applies, the county council may be called upon to make an order as to the future representation of the new parishes.

The county council will have power to give names to the new parishes formed by the Act, although no order for any alteration of area has been made by them. (Section 55 (2).)

It is provided by sub-section (11) of section 79 of the new Act that the overseers of any parish divided by the Act shall, until the first appointment of overseers next after the appointed day, continue in office as if they were overseers of each part of the parish, which by reason of such division becomes a separate parish.

The case of parishes with a population under 200 is dealt with under the head of Parish Councils.

It is to be observed that when parishes are divided, and new parishes are constituted by the Act, whether under section 1 (3) or section 36 (2), they are to be separate parishes in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same. The formation of parishes under the Acts referred to has no effect as regards the constitution of school districts without the sanction of the Education Department.

Taking next the case of the rural sanitary districts situate in more than one county, the Act provides that where any such district is on the appointed day situate in more than one administrative county, such portion thereof as is situate in each administrative county shall be as from that day a rural district, save as otherwise provided by or in pursuance of this or any other Act. (Section 24 (5).) Unless, therefore, as regards any particular rural sanitary district not wholly comprised within one county, a joint committee of the county councils interested for special reasons otherwise direct, the district will be divided by the Act.

In a case where a rural sanitary district is in more than one county, but none of the parishes in the district overlap the boundary of any county, the first question for consideration will be whether any special reasons exist for directing that the district shall not be divided in the manner contemplated by sub-section (5) of section 24. The Act does not define what special reasons may be regarded as sufficient for interfering with the operation of that section, and the discretion of the joint committee of the county councils is, therefore, unfettered in that respect. If it is considered that there

are special reasons for not dividing the district, but it is deemed expedient that the boundary between the counties should be altered so as to include the whole of the district within one county, this alteration can be effected by an order of the Board under section 54 of the Local Government Act, 1888. See sub-section (5) of section 36 of the new Act.)

If the division of the district is not interfered with, but the effect of it would be to create a rural district having less than five elective councillors, the case comes under paragraph (iii.) of sub-section (1) of section 36, which requires that any such district shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts. This applies also to rural districts having less than five elected councillors which already exist, irrespective of county boundaries. If the county council find that there are sufficient reasons for not uniting the district to some neighbouring district or districts, as for instance, in a case where the severed part is entirely rural in character, and there is no other rural district within a convenient distance to which it could be united, they may make an order accordingly, and if the order is confirmed it will devolve on the Board under sub-section (5) of section 24 to nominate members of the district council in order to make the number up to five, or to take some other action under that sub-section.

If no special reasons to the contrary exist, the council must make an order uniting the district to some neighbouring district or districts. The Act does not require that the district should necessarily be united to another rural district; and its provisions would apparently be complied with if the district were united to a neighbouring urban district, although usually, no doubt, the proper course would be to unite it with a neighbouring rural district. The district might, however, be divided by the order of the county council, part being added to one neighbouring district, and part to another.

In any case where a new rural district is formed by the Act, and in any other case where there is any doubt as to the name of a rural district, the county council will have to direct what shall be the name of the district.

Cases where a parish within a rural sanitary district overlaps the boundary of the county will be more complicated. In these cases arrangements must be made to prevent the overlapping of the county boundary by the parish, even if the rural district is allowed to be in more than one county. As a rule, it would seem in these cases that the parish should be divided by order of the county council, but the Act will admit of an alteration of the county boundary if that course seems expedient.

It is to be borne in mind that the Act itself does not form separate parishes of the parts of a parish situate in different administrative counties. The division under sub-section (5) of section 24 of a rural sanitary district comprising such a parish will not affect the parish in this respect, but the parish will have to be divided by order of the county council, unless the county boundary is altered so as to include the whole of the parish in one county. Where a parish is so divided, in order of the county council must contain directions as to the number of guardians and district councillors to be elected for each of the new parishes formed by the order.

The alteration of a rural district by or in pursuance of the Act will not affect the area of the poor law union with which at present the district is co-extensive, or in which it is comprised, but where the alteration of a poor law union seems expedient by reason

of any of the provisions of the Act, the county council are empowered by sub-section (6) of section 36, to provide by their order for such alteration.

Where the alteration of the boundary of a county is deemed expedient for any of the purposes mentioned in section 36, application should, as already indicated, be made to the Board for an order under section 54 of the Local Government Act, 1888. If it is proposed that the boundary of a borough should be altered for these purposes a like application should be made. (Section 35 (5).)

Where the alteration of the boundary of any parish, or the division thereof, or the union thereof, or of part thereof with another parish, seems expedient for any of the purposes of the Act, provision for such alteration, division, or union, may be made by an order of the county council under section 57 of the Act of 1888. (Section 36 (8).)

The provisions of section 59 of the Local Government Act, 1888, will apply to any order for the purposes of the present Act that may be made under section 57 of that Act, and section 69 of the new Act provides that in any case where an alteration of any area is made by the Act, an order may be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils, for any of the matters mentioned in section 59 of the Act of 1888. Under these powers adjustments may be made of any property, debts, and liabilities affected by the alteration, and directions may be given for effecting any subsidiary arrangements rendered necessary by the alteration.

Sub-section (12) of section 36 requires that every report made by the Boundary Commissioners under the Local Government Boundaries Act, 1887, shall be laid before the council of any administrative county affected by that report, and before any joint committees of county councils. The sub-section further provides that it shall be the duty of the councils and joint committees to take these reports into consideration before framing any order under the powers conferred on them by the Act. The county council will not be bound to give effect to the recommendations of the Commissioners, but the reports in question will be found to be of assistance in arriving at a decision in regard to any matter dealt with therein.

## II.â Parish Councils.

Under section 3 of the Act the county council are required to fix the number of councillors to be elected for each rural parish which will have a parish council. The number is to be not less than 5 nor more than 15, and it should be fixed sufficiently early for proper arrangements to be made for the candidature of persons desirous of offering themselves for election at the first election.

In any case where there is any doubt as to the name of the parish for which a parish council is elected, the name will be such as the county council, after consultation with the parish meeting, may direct. (Section 3 (9).)

The county council may be applied to by the parish council, or not less than one-tenth of the parochial electors of a parish, or before the appointed day by the vestry or a like number of the ratepayers of the parish, to divide the parish into wards for the purpose of electing parish councillors; and on being satisfied that the area or population of the parish is so large, or different parts of the population so situated, as to make a single parish meeting for the election of councillors impracticable or inconvenient, or that it is desirable for any reason that certain parts of the parish should be separately



represented on the council, the county council may make an order for the purpose. The order must fix the boundaries of the wards and the number of councillors to be elected for each ward. In making the order regard must be had to the population according to the last published census for the time being, and to the evidence of any considerable change of population since that census, and to area and to the distribution and pursuits of the population, and to all the circumstances of the case. (Sections 18 and 81 (3).)

Section 1 of the Act provides for the grouping of two or more parishes under a common parish council, subject to the proviso that parishes shall not be grouped without the consent of the several parish meetings. For this purpose the section enacts that an order may be made by the county council under Part III. of the Act.

The county council may, with the consent of the parish meetings, make such an order either on their own initiative, or on the application of the parish meeting of any of the parishes proposed to be grouped. If any such application is made, it must be taken into consideration forthwith. (Section 38 (4).)

The whole of the parishes to be formed into a group should, as a rule, be within the same county and county district, but if there are special reasons for grouping parishes in adjoining counties or county districts, the county council may depart from the rule. (Section 38 (2).)

The order must make provision for the name of the group, and as under section 1 each of the grouped parishes is to have a separate parish meeting, it must make any necessary provisions as to this also. It is further enacted that a grouping order shall provide for the election in manner provided by the Act of separate representatives of each parish on the parish council, and that it may provide for the consent of the parish meeting of a parish to any particular act of the parish council or for any other adaptations of the Act to the group of parishes, or to the parish meetings in the group. The mode of election of parish councillors is determined by sections 3 and 48. Further, the grouping order must provide for the application of the provisions contained in section 14 and 17 of the Act with respect to the appointment of trustees and beneficiaries of charities, and the custody of documents, so as to preserve the separate rights of each parish.

The county council will be empowered to order the establishment of parish councils in rural parishes which, according to the census of 1891, have a population of less than 300. (Section 1.) If in the case of a rural parish with less than 300 but more than 100 inhabitants, the parish meeting so resolve, the county council must, by an order under Part III. of the Act, provide for the establishment of a parish council. In this case, the county council will have no alternative but to issue the order if the necessary resolution is passed.

In regard to any rural parish with less than 100 inhabitants, the county council may issue an order establishing a parish council, if the parish meeting consent, but the parish will have no right to demand that a parish council should be established. The grant of a parish council will be in the discretion of the county council. Subject, however, to the necessity for obtaining the consent of the parish meeting the county council may act in these cases on their own initiative; but if the population of a parish is less than 200 the parish meeting may apply for a parish council under subsection

(4) of section 38, and any such application must forthwith be taken into consideration by the county council.

Where a rural parish is co-extensive with a rural sanitary district, sub-section (4) of section 3G provides that until the district is united to some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council shall in addition to their own powers have the powers of and be deemed to be the parish council. In these cases, therefore, it will rest with the county council to determine whether the rule laid down in the sub-section should be departed from; and in any such case it will be competent to the county council to make an order directing that a parish council shall be elected for the parish. There is no special reason, however, why these cases should be dealt with before the first elections under the Act.

### III.—Guardians and District Councillors.

Under section 60 of the Act, the county council will have power to fix or alter the number of guardians or rural district councillors to be elected for each parish within their county, and it is provided that for those purposes the council may exercise powers of adding parishes to each other and dividing parishes into wards, similar to those which by the Act relating to the relief of the poor are, for the purpose of the election of guardians, vested in the Board.

The power to add parishes to each other for the purpose of the election of guardians is conferred on the Board by section G of the Poor Law Amendment Act, 1865 (31 & 32 Vict. c. 122). That section provides that the Board may add any parish in a union, the population of which does not exceed 300, and the aggregate rateable value of which does not exceed the average rateable value of the parishes in the same union, to some adjoining parish in the union for the purpose of the election of guardians. The county council will thus be able to add any such parish, if it is an urban parish, to any other urban parish in the union, for the purpose of the election of guardians, and to add any such parish, if it is a rural parish, to any other parish in the rural district for the purpose of the election of rural district councillors; but they will not be able to add an urban parish to a rural parish, or vice versa.

The power conferred on the Board by the Poor Law Acts to divide parishes into wards for the election of guardians is contained in section 12 of the Divided Parishes and Poor Law Amendment Act, 1875 (39 & 40 Vict. c. 61), which enables the Board to divide any parish into wards for the election of guardians and to determine the number of guardians to be elected for each ward, due regard being had to the value of the rateable property therein.

Under sections 20, 24, and 60 of the new Act, the county council will regulate the retirement of guardians and rural district councillors. The first of these sections provides generally that the term of office of a guardian shall be three years, and that one-third, as nearly as may be, of every board of guardians shall go out of office on the 10th April in each year. Where, however, the county council on the application of a board of guardians consider that it would be expedient to provide for the simultaneous retirement of the whole board, they may direct that the members shall retire together on the 15th April in every third year. Where a union is in more than one county, an order for this purpose may be made by a joint committee of the councils of the

counties concerned. There are some cases in which at the present time the whole of the guardians retire at the end of every third year in pursuance of an order of the Board, and in these cases the guardians are to continue so to retire, unless the county council, or a joint committee of the county councils, on the application of the board of guardians, or of any district council of a district wholly or partially within the union, otherwise direct.

Section 24 makes the provisions of the Act with respect to the term of office and retirement of guardians applicable to the district councillors of a rural district. In any case where such a district is in more than one union, it will be necessary to secure that the mode of retirement of the guardians of the unions shall be the same, as otherwise there may be serious difficulties in connection with the constitution of the district council.

Section 60 provides that the council of each county may for the purpose of regulating the retirement of guardians or rural district councillors, in cases where they retire by thirds, direct in which year or years of each triennial period the guardians or district councillors for each parish, ward, or other area in the union or rural district shall retire.

Where the union is situated in more than one county, the power of fixing or altering the number of guardians or rural district councillors, and of regulating the retirement of guardians and of district councillors, is to be exercised by a joint committee of the councils of the counties concerned; but if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed will have power to act as the joint committee. If any order made by a joint committee under this provision is within six weeks after the making thereof objected to by any of the county councils concerned, or by any committee of any of those councils authorised in that behalf, the order will be inoperative until confirmed by the Board. (Section 59.)

Where the guardians and rural district councillors are to retire by thirds, in accordance with the rule prescribed by section 20, it will be necessary, as the full number of guardians or district councillors will be elected at the first election, to provide for retirements in the years 1896 and 1897. There will be no retirements under the Act before 1896. (Section 78.) The question as to the guardians and rural district councillors who will have to retire in the two years mentioned, is under sub-section (4) of section 79 to be determined by the county council with reference to the parishes, wards, or other areas for which the guardians or councillors are elected.

#### IV. Highways.

Section 25 of the Act provides that as from the appointed day, there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of any highway authority in the district, that highway boards shall cease to exist, and that rural district councils shall be the successors of the highway authorities. It is, however, enacted that the council of any county may by order postpone within their county, or any part thereof, the operation of this section, so far as it relates to highways, for a term not exceeding three years from the appointed day or such further period as may, on the application of the county council, be allowed by the Board.

The expression "highway authority" as used in the Act, means as respects a highway district, the highway board, or authority having the powers of a highway board, and



as respects a highway parish, the surveyor or surveyors of highways, or other officers performing similar duties. (See Local Government Act, 1888, section 100; Local Government Act, 1894, section 75.)

The effect of section 25 will be that all these highway authorities will cease to exist on the day on which the first rural district councillors come into office, and that the rural district councils will thereupon become the highway authorities, unless the county councils postpone the operation of the section.

By section 79, persons who are members of highway boards at the passing of the Act will be continued in office until the day on which the first rural district councillors come into office, that is, as at present fixed, the second Thursday after the 8th of November next, as if the terms of office for which they were elected expired on that day, and consequently the usual annual election of waywardens will not take place.

The election of surveyors of highways under the Highway Act, 1835, will however take place, as usual, at the first meeting in vestry for each parish, not in a highway district, for the nomination of overseers in the present year.

An order under section 25 is, by section 84, to make such provision as may be necessary for holding elections of highway boards in any interval during which the operation of section 25 is postponed. This provision will enable the county council to give directions in their order for the election of waywardens in place of those who will cease to hold office, as mentioned above, when the rural district councillors come into office, and also to order for what period such waywardens shall be elected, having regard to the period of postponement.

No similar provision appears, as a rule, to be required as regards the annual election of surveyors for parishes not in highway districts during the interval referred to, and the effect of the postponement of the operation of section 25 would seem to be that in such a case surveyors will continue to be elected from year to year so long as necessary. But in the case of new rural parishes formed by or in pursuance of the Act, it may be necessary, in the event of the county council postponing the operation of section 25, to provide for the election of surveyors to act for periods until the next ordinary time for electing surveyors.

This course would not be requisite as regards a parish partly within and partly without an urban district, which, by virtue of section 216 of the Public Health Act, 1875, is at the present time treated as wholly within the urban district for highway purposes, because, if the county council postpone the operation of section 25, the part of the existing parish which is outside the urban district will continue subject to section 216 of the Act of 1875 until the rural district council become the highway authority, notwithstanding that it may have become a separate parish.

#### V. Miscellaneous.

Sub-section (7) of section 48 of the Act requires the county council to fix a scale for the expenses of elections under the Act, i. e., of elections of parish and district councillors and guardians. If, at the beginning of one month before the first election, the county council have not framed any such scale for their county, the Board will have power to frame a scale for the purposes of that election. The Board will be glad to receive a copy of the scale framed by the county council under this section as soon as it has been approved by the council.

Under sections 48 and SO the county council will have very extensive powers for the removal of any difficulties that may arise in connection with the election of parish and district councillors and guardians, and generally in bringing the Act into operation within their county. Sub-section (â ) of section 48 provides that if any difficulty arises as respects the election of any individual councillor or guardian, and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.,. f

Under section 80, if any difficulty arises with respect to the Holding 01 the first parish meeting of a rural parish, or to the first election of parson or district councillors, or of guardians, or to the first meeting of a parish or district council, or board of guardians, or if, from no election being held, or an election being defective or otherwise, the first parish or district council, or board of guardians, has not been properly constituted, the county council may, by order, make any appointment or do any thing which appears to them necessary or expedient for the proper holding of any such first meeting or election, and properly constituting the parish or district council or board of guardians. They may, if it appears to them necessary, direct the holding of a meeting or election, and fix the necessary dates for the purpose. Any such order may modify the provisions of the Act, and the enactments applied by, or rules framed under it so far as may appear to the county council necessary or expedient for carrying the order into effect.

If a parish council or a district council, other than a borough council, become unable to act whether from a failure to elect or otherwise, the county council may order elections to be held and may authorise persons to act temporarily in place of the parish or district council and the chairman of the parish council. (Section 47 (5) and section 59 (5).)

Under section 17 each parish council will be empowered to appoint an unpaid treasurer, and this officer is to give such security as may be required by regulations of the county council. It is desirable that such regulations should be made before the parish councils come into office. They may provide both as to the character and as to the amount of the security to be taken from the treasurers, and the Board suggest that they should be so framed as to require such security to be given by these officers as will be sufficient to cover the amount likely to be in their hands belonging to the parish councils at any one time.

It is now necessary to refer to the provisions which will govern the procedure of the county council in regard to the issue of orders for the purposes mentioned above.

Sub-section (10) of section 36 directs that, subject to the provisions of the Act, any order made by a county council in pursuance of Part III. of the Act (as to areas and boundaries) shall be deemed to be an order under section 57 of the Local Government Act, 1888. Every such order will consequently have to be made in accordance with the provisions of that section, and of the regulations issued by the Board thereunder, and, with the exceptions mentioned in section 40 of the Act (to which attention should be specially directed), will require confirmation by the Board in the manner prescribed by section 57 of the Act of 1888.

An important amendment of the section referred to is made by section 41 of the new Act, which provides that the time for petitioning to the Board against an order of

a county council under the section shall be six weeks instead of three months after the first notice of the provisions of the order.

The Act also provides that any board of guardians affected by an order under Part III. of the Act, are to have the same right of petitioning against the order as is given by section 57 of the Act of 1888 to other authorities (section 36 (10)); and that where any of the areas referred to in section 57 of the Act of 1888 is situated in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situated in two or more counties, a joint committee appointed by the county councils concerned is, subject to the terms of delegation, to be deemed to have and to have always had power to make orders under the section with respect to that area. (Section 36 (11).)

An order made under section 60 of the new Act as to the number or retirement of guardians or rural district councillors will, as already mentioned, require confirmation by the Board if, in the case of a union situated in more than one county, the order is objected to by any of the county councils concerned or by a committee of any of those councils authorised in that behalf.

Among the orders that will not be subject to the provisions of section 57 of the Act of 1888, and will not require to be submitted to the Board, are orders of the county council fixing the number of parish councillors for a parish or dividing a parish into wards for the election of parish councillors.

An order made by the county council under section 2., postponing within their county or some part thereof the operation of that section as regards highways, will not require the confirmation of the Board, although if it is proposed to postpone the operation of the section for more than three years from the appointed day, the postponement will require allowance by the Board.

In connection with the orders of the county council under this Act, it may be pointed out that by section 42 it is provided that in any case where an order under section 57 of the Act of 1888 (including any order made or deemed to have been made thereunder for the purposes of this Act) has been confirmed by the Board, such order is at the expiration of six months from the date of confirmation to be presumed to have been duly made, and to be within the powers of that section, and no objection to the legality thereof can be entertained.

A copy of every order made by a county council or joint committee in pursuance of the Act is to be sent to the Board, and, if it alters any local area or income, a copy must be sent also to the Board of Agriculture. (Section 71.)

Sub-section (2) of section 80 requires that the Board shall issue regulations for expediting and simplifying the procedure under section 57 of the Act of 1888 in all cases in the year 1894, for the purpose of bringing the Act into immediate operation.

The Board have issued an order for this purpose, which, as regards the cases referred to, will take the place of the regulations made by them on the 14th September, 1889, except where notice of a local inquiry has been given before the date of the order.

It will be found that the new regulations materially expedite and simplify the procedure under section 57 of the Act of 1888, and the Board may draw special attention to the provisions in Article VIII. (3). In cases in which an order made under



the section does not require confirmation by the Board it has hitherto been necessary that the order, after having been made, should be again approved by the county council after certain notices have been given and a specified interval has elapsed. The effect of the provision in Article VIII. (3) will be that no final approval on the part of the county council will be requisite, if the requirements of Articles IV. and VIII. have been complied with.

It will also be observed that under Article IX. the expression " county council," as used in the order, will include a committee of the county council, to whom they have delegated their powers under the Act of 1894, and also a joint committee appointed by any county councils for the purpose of dealing with any cases in which they are jointly interested

The Board enclose six copies of the order, and they have caused it to be placed on sale. If, therefore, further copies are required, they can be purchased from Messrs. Eyre and Spottiswoode, East Harding Street, London, E. G., either directly or through any bookseller. Copies of this circular can also be purchased in the same way.

It has sometimes been pointed out by county councils that no provision was made by the Local Government Act, 1888, as to the expenses of inquiries held by them under the Act. It is now provided by subsection (4) of section 72 of the new Act, that where a county council hold a local inquiry under the Act or under the Act of 1888 on the application of a parish council or district council, or of any inhabitants of a parish or district, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorised by the county council) are to be paid by the council of that parish or district, or, in the case of a parish which has not a parish council, by the parish meeting. Subject to this, however, the expenses of the county council incurred in the case of inquiries under the Act must be paid out of the county fund.

Section 44 contains provisions as to the register of the parochial electors which is to be formed alike for urban and for rural parishes for the purposes of elections under the Act. The Board do not consider it necessary to refer to these provisions in detail; but the attention of the county council should be directed to the proviso to sub-section (3) of section 84, under which, if the county council have under consideration any division into wards or alteration of the boundaries of any parish, or union, or district which is to affect the first election, they may direct that the lists of voters shall be framed in parts corresponding with such division or alteration so that the parts may serve either for the unaltered parish, union, or district, or for the same when divided or altered.

In making any such division or alteration at any time in the month of July or August next, the county council may direct their clerk to make such adjustment of the registers of parochial electors as the division or alteration may render necessary for enabling every parochial elector to vote at the first election in the ward, union, or district in which his qualification is situate, and it will, of course, be the duty of the clerk to give effect to any such direction. (Section 84.)

The orders of the county councils altering areas may direct that for the purpose of preparing the lists and registers of electors for the first elections of parish and district councillors, the orders shall take effect at such time as to enable the overseers to make

out the lists for the altered areas, although the areas will not be actually altered until the appointed day.

Numerous powers and duties besides those which have been indicated above are conferred on county councils by the Act, but the Board do not think it necessary to specify them on this occasion, as their present purpose is to bring under the notice of the county council those powers and duties which may have to be exercised for the purpose of bringing the Act into operation, and they believe that they have now mentioned all that need be referred to with this object.

It is evident that in order that effect may be given to the intentions of the legislature, it is requisite that the county councils should without delay set about the exercise of the important powers which have been entrusted to them. As the Board have already pointed out, section 83 makes it the duty of every county council to exercise all such of their powers as may be required for bringing the Act into full operation within their county as soon as may be after its passing, and enables them to delegate their powers under the Act to a committee, and the Board feel assured that they may rely on every effort being used by the County Council to bring the Act into full operation in their county at the earliest possible date.

The Board strongly recommend them forthwith to appoint a committee for carrying out the Act if they have not already done so, and to delegate to such committee their powers under it.

They also recommend that either such committee or the Council should at once place themselves in communication with the councils of the other counties in which parishes or rural sanitary districts partly within and partly without the county are situate, with a view to the immediate appointment of any joint committees necessary to enable such cases to be dealt with.

The Board would further suggest that the clerks to rural and urban sanitary authorities should, as soon as possible, be applied to for information as to whether the districts of those authorities come within the cases mentioned in section 36 of the Act, or contain parishes or parts of parishes which are within those cases. In the meantime, the Parliamentary returns relating to counties and poor law parishes of which copies are enclosed will give the most recent information that has been published as to the cases where parishes and rural sanitary districts are in more than one county. The return relating to poor law parishes also shows the number of parishes partly in rural sanitary districts. The names of parishes partly in urban sanitary districts may be obtained from the tables numbered 4 in the second volume of the Report on the Census of 1891, but there have been alterations since the date of the census, and these tables may not now be quite accurate.

As regards the matters referred to under the head of parish councils, the

Board have already pointed out that the number of councillors should be fixed sufficiently early for proper arrangements to be made for the candidature of persons desirous of offering themselves for election at the first election. With this exception, it would seem that unless application is made by the vestry, or one-tenth of the ratepayers of a parish, to divide the parish into wards, it will not devolve on the county council to make any orders with respect to these matters before the appointed day. Bisection 36 the council are required to take into consideration the c 1 small rural parishes, but

no order for the grouping of such parish. s, or the establishment of parish councils therein, could actually be made without the consent of the parish meeting given after the appointed day.

As regards section 25 of the Act, it will of course be necessary that any order postponing the transfer of the powers of highway authorities should be made before the appointed day.

Some inquiries have been addressed to the Board with respect to the meaning of the word "parish" as used in the Act. They may state, therefore, that it bears the meaning given to it by section 5 of the Interpretation Act, 1839 (52 53 Vict. c. 63), which provides that unless the contrary intention appears, the expression shall mean a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

I am, Sir, your obedient Servant,

Hugh Owen, Secretary. The Clerk of the County Council.

Circular Letter to Clerks of County Councils, Town Clerks and Returning Officers as to the Local Government Act, 1894.

2nd April, 1894.

Sir,

I am directed by the Local Government Board to state that several inquiries have been addressed to them as to whether, in view of the provisions of the Local Government Act, 1894, it is intended that an Order in Council should be issued to amend, for the purposes of the approaching registration of electors, the instructions, precepts, notices, and forms prescribed by the registration Order, 1889. The Board direct me to state that it is not proposed at present to issue an Order in Council on the subject; but they think it very desirable that the attention of the overseers should be specially drawn to the duties imposed upon them by the Act, in connection with the enfranchisement of married women for the purposes of the Act and the preparation of the lists of electors, and they suggest that this might conveniently be done by a note attached to your precept and issued with it.

The provisions to which the attention of the overseers should be drawn are those contained in section 43 and sub-sections (3) and (9) of section 44 of the Act.

Section 43 enacts that, for the purposes of the Act, a woman shall not be disqualified by marriage for being on any local government register of electors, or for being an elector of any local authority, provided that a husband and wife shall not both be qualified in respect of the same property.

Sub-section (3) of section 44 requires that the lists of electors in any parish shall be framed in parts for wards of urban districts and parishes in such manner that they may be conveniently used as lists for polling at elections for any such wards; and sub-section (9) of this section provides that any person may claim for the purpose of having his name entered in the parochial electors list, and that the law relating to claims to be entered in lists of voters shall apply.

The Board direct me to add that in the preparation of the lists of electors regard should be had to the provision in section 1 (3) of the Act, under which parishes situate partly within and partly without a rural sanitary district will be divided into separate



parishes, and the attention of the Overseers might with advantage be called to this point also.

I am, Sir, your obedient Servant,

Hugh Owen, Secretary. To the Clerk of the County Council,

Town Clerk, or Returning Officer.

Circular Letter to Boards of Guardians as to the Local Government Ad, 1894.

3rd April, 1894. Sir,

I am directed by the Local Government Board to state that inquiries have been addressed to them as to the effect of the Local Government Act, 1894, as regards the term of office of the present chairmen and vice-chairmen of Boards of Guardians, and the continuance in office of committees appointed by the Guardians.

The Board direct me to point out that section 79 (8) of the Act, which continues in office, until the day on which the first guardians and rural district councillors elected under the Act come into office, the persons who were members of Boards of Guardians and of Rural Sanitary Authorities at the date of the passing of the Act, does not refer to the chairmen or vice-chairmen or members of committees, as such.

In those cases where the orders in force require that the election of chairmen and vice-chairmen should take place at the first meeting of the guardians after the 15th April, the period of office of the chairmen or vice-chairmen will not be affected, and they must therefore be elected at the usual time this year.

As regards an Assessment Committee appointed under the Union Assessment Committee Acts, it appears to the Board that the Committee must be regarded as having been appointed for one year only, and consequently that they must be re-appointed in the present year at the usual time.

In the case of a School Attendance Committee, section 7 of the Elementary Education Act, 1876, expressly provides that the appointment of the Committee shall be made annually, and the Board consider that this Committee should be appointed by the Guardians at their first meeting after the date on which the election of Guardians would have taken place if an election had been held this year at the usual time (see Rule 6 of the Second Schedule to the Act of 1876).

The Visiting Committee, however, will, in the opinion of the Board, continue in office until after the election of the new Board of Guardians in November next, unless the Committee were definitely appointed for a limited period only.

A Relief Committee will, subject to the terms of the Order authorising the appointment of the Committee, continue in office until November next without re-appointment, unless the Committee were appointed for a limited time.

A Committee appointed to consider and report on any special subject will continue in office after the date on which the Guardians would but for the Local Government Act, 1894, have gone out of office, if the business for which the Committee were appointed is not completed by that date.

A Sanitary Committee appointed under section 201 of the Public Health Act, 1875, can only continue until the end of the ordinary year of office of the Guardians, and the Committee must accordingly be re-appointed after that time in the present year, if it is desired that they should still exist.

I am, Sir, your obedient Servant,

Hugh Owen, Secretary. The Clerk to the Guardians.

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